

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 384 of 2016**

1. Kahar Singh, aged about 40 years, S/o Late Chand Ram
2. Prem Singh, aged about 35 years, S/o Late Chand Ram,
3. Dwarika Singh, aged about 32 years, S/o Late Chand Ram,
4. Ashok Singh, aged about 33 years, S/o Late Chand Ram,
5. Masat Ram, aged about 70 years, S/o Late Sukhi Ram,

All residence of Village-Shandel, Tehsil – Kartala, District-Korba
(C.G.) Defendants No. 5 to 9

---- Appellants**Versus**

1. Samarin Bai, aged about 32 years, D/o Late Banmani
2. Budhwarin, aged about 32 years, D/o Late Banmani
(Both father correct name is Banmali)
3. Laxman Singh, aged about 35 years, S/o Baiman Singh,
4. Sidar Singh, aged about 35 years, S/o Baiman Singh,
5. Pawan Singh, S/o Sabadh Ram
6. Badan Singh, S/o Sabadh Ram

All residence of Village-Shandel, Tehsil – Kartala, District Korba
(C.G.)

7. State of Chhattisgarh through the Collector-Korba, C.G.

.....Plaintiffs and Defendant No. 1 to 4

---- Respondents

For Appellants	:	Mr. Vishnu Kosta, Advocate.
For respondents No. 1 & 2	:	Mr. A.S. Rajput, Advocate.
For respondent No. 7	:	Mrs. Astha Shukla, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/09/2016

(1) The substantial question of law formulated and to be answered by this Court in the defendant's 5 to 9 second appeal is as under:-

“Whether the first appellate Court was justified in dismissing the appeal as barred by limitation by recording findings which are perverse and contrary to the record ?”

[For sake of convenience, the parties would be referred hereinafter as per their status shown in the plaint before the trial Court]

(2) Respondents No. 1 & 2/plaintiffs suit for declaration and partition was decreed by the trial Court on 30.11.2015.

(3) Feeling aggrieved & dissatisfied with the judgment & decree passed by the trial Court, defendants No. 5 to 9 preferred first appeal before the first appellate Court on 23.01.2016 along with an application for condonation of delay in filing the appeal as the appeal was barred by twenty three days assigning the reasons that as the defendants fell ill and copy of decree could not be obtained right in time, delay of 23 days occurred in filing the appeal, which is unintentional and bonafide and deserves to be condoned, which was opposed by plaintiffs/respondents No. 1 to 3 by filing reply.

(4) The first appellate Court, vide its impugned order dated 11.05.2016, has dismissed the first appeal holding that no sufficient cause has been shown for delay in filing the appeal.

(5) Impugning the legal acceptability and sustainability of the order dated 11.05.2016 passed by the First Appellate Court, the second appeal under Section 100 of the CPC has been preferred by the defendants No. 5 to 9 (appellants herein), which has been admitted for final hearing on

the substantial question of law as stated in opening paragraph of this judgment.

(6) Mr. Vishnu Kosta, learned counsel appearing on behalf of the appellants/defendants No. 5 to 9 would submit that the First Appellate Court has committed grave illegality in holding that no sufficient cause has been shown in preferring the appeal under Section 96 of the CPC, whereas, Mr. A.S. Rajput, learned counsel for respondents No. 1 & 2/plaintiffs would submit that the First Appellate Court has rightly rejected the application under Section 5 of the Limitation Act the thereby dismissal of first appeal is well merited.

(7) I have heard learned counsel appearing for the parties and perused the records of both the Courts below with utmost circumspection.

(8) The civil suit was instituted on 07.01.2014 and the judgment & decree was passed by the trial Court on 30.11.2015. The present defendants contested the suit right from 7.1.2011 to the date of judgment of the trial Court i.e. on 30.11.2015 and thereafter regularly appearing before the trial Court either through counsel or personally and the appeal is delay by only twenty three days.

(9) It is well settled law the Courts should adopt an justice-oriented approach in considering the application for condonation of delay. However, the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of *bona fides* of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay.

(10) In case of **N. Balakrishnan V. M. Krishnamurthy**¹, it has been held by the Supreme Court that the sufficient cause has to be construed liberally especially when the delay is not deliberate and malafide. Relevant portion of the report held as under:-

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would

¹ (1998) 7 SCC 123

result in foreclosing a suitor from putting forth his cause.

There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide **Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 Sc 575]** and **State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749].**”

(11) Recently, the Supreme Court in the case of **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and others²** has laid down the principles for deciding application for condonation of delay, which has been followed by this Court in case of **Pradeep Majumdar V. Duvas Bai and others³**. Para 21 of the **Esha Bhattacharjee(Supra)** states as under:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- iii) Substantial justice being paramount and pivotal the technical

² JT 2013 (2) SC 450

³ 2013 (4) B.L.J. 433

considerations should not be given undue and uncalled for emphasis.

- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant

not to expose the other side unnecessarily to face such a litigation.

- xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.
- xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

(12) Keeping in view the principles laid down in the above-stated cases, the facts of the instant case is examined, I find from the record that defendants No. 5 to 9 contested the suit right from 07.01.2014 to the date of judgment of the trial Court i.e. 30.11.2015 and thereafter regularly appearing before the trial Court either through counsel or personally and the appeal is delayed by only twenty three days and as the defendants fell ill, they could not prefer the appeal within the period prescribed under the Limitation Act. It is neither deliberate and nor out come of malafide action and the cause shown for delay in filling the application is an a “sufficient cause” within the meaning of Section 5 of the Limitation Act.

(13) This Court is of the considered opinion that the First Appellate Court has committed illegality in rejecting the application under Section 5 of the Limitation Act. The impugned order/judgment dated 11.05.2016 is hereby set aside. The delay in filing the appeal is condoned. The First Appeal (Kahar Singh & others Vs. Samarin Bai & others) is restored to the original file of District Judge, Korba for hearing and disposal of appeal on

merits in accordance with law.

(14) The parties are directed to appear before the District Judge, Korba on 24th October, 2016. The First Appellate Court is directed to decide the appeal on merits expeditiously as the judgment & decree of the trial Court was passed on 30.11.2015.

(15) A decree be drawn accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-