

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 568 of 2016

1. Rajesh Sahu S/o Late Arjun Sahu Aged About 28 Years
2. Sanjay Sahu S/o Late Arjun Sahu Aged About 26 Years
3. Keshari Kumar Sahu Wi/o Late Arjun Sahu Aged About 50 Years

All residence of Anupurna Hotel, Pahadi Chowk, Gudiyari,
District-Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Shrimati Sushila Sahu Widow of Bheem Sahu, Aged About 47 Years
2. Santoshi Sahu Wid/o Mahadev Sahu Aged About 32 Years
3. Saraswati Sahu W/o Khemlal Sahu Aged About 38 Years
4. Rambai, D/o Bhagirathi Sahu Aged About 50 Years

All Residence of Adarsh Nagar Pahadi Chowk, Gudiyari, District-
Raipur, Chhattisgarh.

5. State Of Chhattisgarh, Through The Collector-Raipur, District-
Raipur, Chhattisgarh.
6. Additional Tehsildar (Revenue) Dharsiva, District-Raipur,
Chhattisgarh.

---- Respondent

For Petitioners	Mr. Shobhit Koshta, Advocate
For Respondent/State	Mr. P.K. Bhaduri, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

21/9/2016

1. Heard.

2. The petitioner has assailed the legality and validity of the impugned order passed by the First Appellate Court condoning the delay of 05 months in preferring the First Appeal.
3. On the strength of the decisions rendered in the matters of **Balwant Singh (Dead) Vs. Jagdish Singh and others, AIR 2010 SC 3043** and **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013 AIR SCW 6158**, it is argued by learned counsel for the petitioners that there was no justifiable cause shown by the respondents seeking condonation of delay, therefore, the order passed by the First Appellate Court is perverse and has been so passed with material irregularity in exercise of its jurisdiction.
4. In the matter of ***Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRs and others, (2008) 8 SCC 321***, the Supreme Court has held that the expression "sufficient cause" should be construed to advance the cause of justice rather than using the same with a hyper-technical approach to defeat the ends of justice.
5. In the matter of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others, (1987) 2 SCC 107**, the following has been held by the Supreme Court in para 3 :

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "*merits*". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply

the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it

is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable

opportunity of hearing to both the sides.”

6. Applying its earlier decision in **Surya Dev Rai Vs. Ram Chander Rai** , (2003) 6 SCC 675 and **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**, (2010) 8 SCC 329, the Supreme Court in the matter of **Sameer Suresh Gupta through PA Holder Vs. Rahul Kumar Agarwal**, (2013) 9 SCC 374, has further held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.
7. In the case at hand, the First Appellate Court has allowed the application under Section 5 of the Limitation Act preferred by

respondents 1 to 4 and has condoned the delay in preferring the first appeal. The appeal is yet to be heard on merits.

8. On perusal of the order, this Court does not find that the order suffers from any illegality or perversity, which needs correction in exercise of powers under Article 227 of the Constitution of India .

9. The writ petition has no substance, it fails and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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