

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 2 of 2016**

1. Yuvraj, S/o Late Sadhuran Kewat, aged about 29 years.
2. Vinod, S/o Late Sadhuran Kewat, aged about 27 years.
3. Shatruhan, S/o Late Purru Kewat, aged about 69 years.
4. Aju Ram, S/o Late Purru Kewat, aged about 67 years.

All are R/o Sukhri Khurd, Tahsil Dhamdha, District Durg
(C.G.)

---- Applicants
Respondents No. 1 to 4

Versus

1. Sonar, S/o Late Purru Kewat, aged about 71 years.
2. Bahadar, S/o Late Sonar, aged about 49 years.
3. Jeewan Lal, S/o Bisnath Kewat, aged about 16 years
(minor) through natural guardian father Bisnath Kewat.

All are R/o Village Ruha, P.H. No.15, Tahsil Dhamdha,
District Durg(C.G.).

.....(**Appellants**)

4. State of Chhattisgarh, through Collector, Durg, District
Durg (C.G.)

..... (**Respondent No. 5**)

--- Non-applicants

For Applicants:

Mr. H.B. Agrawal, Senior Adv.
with Mrs. Iturani Mukherjee, Adv.

For Non-Applicants No. 1 to 3: Mr. Hari Agrawal, Advocate.

For Non-Applicant No. 4:

Mr. S.C. Khakharia, Dy.
Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/06/2016

(1) Plaintiffs/applicants' suit for declaration of title and separate possession was decreed by the trial Court on 30.9.2013 in Civil Suit No.136-A/2012 granting decree in their favour.

(2) Feeling aggrieved & dissatisfied with the judgment & decree dated 30.9.2013, the defendants/non-applicants No. 1 to 3 filed first appeal under Section 96 read with Section 41 Rule (2) of the Code of Civil Procedure (for short 'CPC') along with application for cononation of delay of 1 years, 9 months & 8 days on 9.7.2015 before the First Appellate Court stating inter alia that they were not aware of the passing of decree and they came to know about passing of decree on 1st week of June, 2013 and after taking necessary steps, appeal has been preferred, therefore, the delay in filing the appeal be condoned.

(3) Reply to that application was filed by applicants/plaintiffs before the First appellate Court.

(4) The First Appellate Court, by its impugned order dated 4.12.2015 finding sufficient cause in preferring the appeal, condoned the delay by allowing an application filed under Section 5 of the Indian Limitation Act.

(5) Questioning the order condoning the delay under Section 5 of the Indian Limitation Act, instant revision has been filed by the plaintiffs/applicants.

(6) Shri H.B. Agrawal, learned Senior Counsel appearing on behalf of the plaintiffs/applicants would vehemently submit that the learned first Appellate Court has condoned the inordinate delay in preferring the appeal by recording findings, which are perverse to its core. He would further submit that defendants were negligent and there is deliberate & intentional delay in filing the appeal for more than one year and, therefore, the impugned order be set aside and the first appeal preferred by the defendants/non-applicants No. 1 to 3 deserves to be dismissed.

(7) Per contra, Shri Hari Agrawal, learned counsel appearing for the non-applicants No. 1 to 4/defendants while countering the submissions made by learned Senior Counsel, would submit that defendants have shown sufficient cause for delay in preferring the appeal; and the first appellate Court has rightly exercised its discretion in condoning the delay, which is not perverse and reasons recorded by the first Appellate Court are based on record and, therefore, no interference is called for in exercise of revisional jurisdiction by this Court under Section

115 of the Code of Civil Procedure.

(8) I have heard learned counsel appearing for the parties and considered their rival submissions made herein and gone through the record of court below with utmost circumspection.

(9) It is not in dispute that the judgment & decree was delivered by the trial Court on 30.09.2013. It is also not in dispute that the first appeal along with application for condonation of delay has been filed on 9.7.2015. Reasons assigned by the non-applicants No. 1 to 3 /defendants are that the counsel for the defendants appearing on their behalf in the trial Court did not communicate the fact of delivery of judgment on 30.9.2013 and passing of the adverse decree against them and on the date of delivery of judgment none of the defendants were present before the trial Court and only when the notice of execution of the judgment & decree was served to them i.e. on 8.6.2015, they arranged the funds, contacted the counsel and obtained certified copy of the judgment & decree and, thereafter preferred first appeal before the first appellate Court on 9.7.2015 with an application for condonation of delay.

(10) The First Appellate Court, in its impugned order, came to the categorical conclusion that the defendants were not present on the date when the trial Court delivered the judgment &

decree and passed decree against them and they came to know about the impugned decree only when the notice of execution was served upon them i.e. on 8.6.2015 and, thereafter, they preferred first appeal on 9.7.2015 after taking necessary steps; and thus the cause shown by the defendants for delay in filing the first appeal are sufficient and is not malafide, and condoned the delay in filing the appeal subject to payment of cost of Rs. 2,000/-.

(11) Law in this regard is settled by the Supreme Court in the matter of **N. Balakrishnan Vs. M. Krishnamurthy**¹, in which their Lordships of the Supreme Court have clearly held that if the competent Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction. Relevant paragraph of the report states as under:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercise only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional

1 (1998) 7 SCC 123

jurisdiction.

(12) The proposition of law laid down in **N. Balakrishnan (supra)** has been reiterated & followed by the Supreme Court in the matter of **B.T. Purushothama Rai Vs. K.G. Uthaya & others²**, in which their Lordships of the Supreme Court have held as under:-

“**17.** On the question of limitation and delay this Court in *N. Balakrishnan v. M. Krishnamurthy (supra)* held that the purpose of the Limitation Act was not to destroy the rights. It is founded on public policy fixing the life span for legal remedy for the general welfare. The primary function of a court is to adjudicate between the parties and to advance substantial justice. The object of providing legal remedy is to repair the damage caused as a result of legal injury. If the explanation given does not smack of mala fides or is not shown to have been put forth as a part of a dilatory strategy, the court must show utmost consideration to the suitor.”

(13) Applying the ratio of law laid down by the Supreme Court in the above referred cases **N. Balakrishnan (supra)** & **B.T. Purushothama Rai (supra)** in the facts & circumstances of the case, it is held that the sufficient cause was shown by the non-applicants/defendants for not preferring the appeal within time and the first appellate Court has rightly exercised its discretion in condoning the delay and it cannot be said to have exercised

² (2011) 14 SCC 86

capriciously, arbitrarily or perversely, consequently I do not find any illegality in the order impugned warranting interference by this Court under its revisional jurisdiction.

(14) For the reasons mentioned hereinabove, the revision being devoid of substance is liable to be and is hereby dismissed. However, looking to the facts & circumstances of case, non-applicants No. 1 to 3/defendants are directed to pay further cost of Rs.3,000/- in addition to cost awarded by first appellate Court to the applicant/plaintiffs within two weeks.

(15) Parties are directed to appear before the first appellate Court on **4th July, 2016**. The trial Court is directed to expedite the trial and to conclude it expeditiously preferably within a period of four months from the date of receipt of copy of this order as the suit was instituted on 13.09.2011.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-