

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.511 of 2007**

1. Kacharu Ram (dead) through Legal Heirs:-
 - 1A Hemendra S/o Kacharu Ram caste Gond
 - 1B Jiwanlal S/o Kacharu Ram Caste Gond
 - 1C Anusuiya Bai D/o Kachru Ram Gond
 - 1D Bhuwanbai D/o Kachru Ram Gond

Nos.1A to 1C residents of Ghasitola Tahsil Chauki Distt.Rajnandgaon (CG)

No.1D resident of Kumhari Tahsil Bhanpur District Rajnandgaon (CG)
 2. Phoolsingh S/o Vishal Caste Gond, aged about 57 years, Cultivator
 3. Parvat Bai Wd/o Durjan Singh caste Gond, aged about 53 years, Cultivator
 4. Balakhan S/o Durjan Singh Caste Gond, aged about 36 years, Cultivator
 5. Rudra Pratap S/o Durjan Singh Caste Gond, aged about 28 years, Cultivator
 6. Kuntibai D/o Durjan Singh, aged about 32 years, cultivator
 7. Savitri Bai D/o Durjan Singh caste Gond, aged about 30 years, cultivator
 8. Aanokhi Bai D/o Durjan Singh aged about 23 years, cultivator
 9. Gouchh Singh S/o Kunwar Singh Caste Gond, aged 51 years, cultivator
 10. Digambar S/o Mansingh, Caste Gond, aged about 42 years, cultivator
 11. Jaswanti Bai D/o Mansingh caste Gond , aged about 41 years, cultivator
 12. Bhagvat Prasad S/o Mansingh Caste Gond, aged about 36 years, cultivator
- All residents of village Ghasitola P.H.No.11 Tahsil and Police Station Mohla/Chouki Distt.Rajnandgaon (CG)

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1. Than Singh S/o Chaituram Caste Gond aged about 48 years, cultivator
2. Chintaram S/o Chaituram caste Gond aged about 42 years,

cultivator

Both residents of village Ghasitola P.H.No.11 Tahsil and Police Station Chouki Distt.Rajnandgaon (CG)

3. Dhamibai D/o Chaituram Caste Gond, aged about 36 years, cultivator, resident of village Sitapathar Tahsil Doundilohara, Distt.Durg (CG)
4. State of Chhattisgarh Through: Collector, Distt.Rajnandgaon (CG)

---- Respondents

For Appellants	: Mr.Ram Kumar Tiwari, Advocate
For Respondents No.1 to 3	: None present though served
For Respondent No.4	: Mr.O.P.Sahu, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

2/9/2016

1. Substantial question of law involved, formulated and required to be answered in this plaintiffs second appeal is as under:-

“Whether the First Appellate Court justified in dismissing the first appeal on the ground of limitation while recording perverse finding ?”

2. Substantial question of law has to be answered on the following factual backdrops:-

(i) The plaintiffs suit for declaration of title and permanent injunction was dismissed by the trial Court by the judgment and decree dated 31.1.2006.

(ii) Against which, the plaintiffs preferred an appeal before the First Appellate Court under Section 96 of the CPC along with an application for condonatiion of delay as appeal was barred by 127 days assigning cause for delay in filing the appeal.

(iii) The First Appellate Court by its impugned order has rejected the application under Section 5 of the Limitation Act finding no sufficient cause and and dismissed the appeal as barred by limitation.

(iv) Feeling aggrieved against the said order, the present second appeal has been filed and substantial question of law formulated and incorporated in the opening paragraph of the judgment.

3. Mr. Ram Kumar Tiwari, learned counsel appearing for the appellants/plaintiffs, would submit that the First Appellate Court is absolutely unjustified in rejecting the application under Section 5 of the Limitation Act as at that time Kaharu Ram, one of the main plaintiff, who was Karta of the family and who was prosecuting the appeal on behalf of the plaintiffs, was seriously ill and subsequently died, therefore, the appeal could not be preferred right in time before the First Appellate Court, therefore, order of the First Appellate Court be set aside by answering the substantial question of law in favour of the appellants/plaintiffs and matter be remanded back to the First Appellate Court for hearing on merits.

4. No one has appeared on behalf of respondents No.1 to 3 despite service.

5. I have heard learned counsel appearing for the appellants and perused the records of both the Courts below with utmost circumspection.

6. It is not in dispute that the appellants were prosecuting the suit diligently before the trial Court and the suit was dismissed on 31.6.2006. The appeal was preferred with a delay of 127 days and cause assigned is that Kachru Ram/plaintiff No.1, who was prosecuting the proceeding and who was aged about 80 years at the time of judgment, felt ill and who had subsequently died, therefore, the appeal could not be preferred before the First Appellate Court right in time.

7. It is well settled law the Courts should adopt a 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.

8. In the matter 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 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**

¹ (1998) 7 SCC 123

**Bengal Vs. The Administrator, Howrah Municipality
[AIR 1972 SC 749].”**

9. Recently, the Supreme Court in the matter of **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and others**² 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 others**³. Para 21 of **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 pro sufficer 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 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.

² JT 2013 (2) SC 450

³ 2013 (4) B.L.J. 433

- 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."

9. Keeping in view the principles laid down by the Supreme Court in **N. Balakrishnan (supra)**, the facts of the instant case are examined, I find that the appellants/plaintiffs have diligently and seriously contested the suit before the trial Court and on account of ailment of one of the member who was plaintiff No.1 before the trial Court, they could not

prefer an appeal within the period prescribed under the Limitation Act. It is neither deliberate and nor outcome of malafide action and the cause shown for delay in filing the application is a "sufficient cause" within the meaning of Section 5 of the Limitation Act.

10. Thus, the First Appellate Court has committed illegality in rejecting the application under Section 5 of the Limitation Act. Therefore, the order impugned dated 11.9.2007 passed by the First Additional District Judge, Rajnandgaon in M.J.C. No.14/2006 is hereby set aside. The delay in filing the appeal is condoned. First Appeal is restored to the original file on the First Additional District Judge, Rajnandgaon for hearing and disposal of appeal on merits in accordance with law. Since the appeal was filed on 13.7.2006, the First Appellate Court is directed to decide the appeal within four months from the date of receipt of copy of this order after noticing the respondents.

11. The second appeal is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K Agrawal)
Judge

B/-