

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 331 of 2013

1. Banshi Lal S/o Bhudhram Sahu, Aged About 60 Years R/o Village Mukundpur, Bhatkapara, Post Office Devpur, Tahsil Nagari, Civil & Revenue Distt. Dhamtari (Chhattisgarh)
2. Brijlal (Dead) Through LRs.

2. (1) Smt. Sato Bai, Aged about 60 Years, Wd/o Late Brijlal Sahu,

2. (2) Yogesh Kumar Sahu, Aged about 32 Years, S/o Late Brijlal Sahu,

No. 2 (1 & 2) R/o Village- Mukundpur, Bhatkapara, Post Office Devpur, Tahsil- Nagri, District- Dhamtari (Chhattisgarh)

2. (3) Smt. Suniti, Aged about 42 Years, D/o Late Brijlal Sahu, W/o Punarad Sahu, R/o Chhipli, Post – Chhipli, Tahsil Nagri, District - Dhamtari (C.G.)

2. (4) Purnima Sahu, Aged about 36 Years, D/o Late Brijlal Sahu, W/o Suresh Sahu, R/o Village – Khamharia, Post – Khamharia, Tahsil Nagri, District – Dhamtari (C.G.)

2. (5) Smt. Seema Sahu, Aged about 34 Years, D/o Late Brijlal Sahu, W/o Ramlal Sahu, R/o Village – Belar, Post Belar, Tahsil Nagri, District Dhamtari (C.G.)

3. Lalit Kumar S/o Punarad Sahu, Aged about 43 Years,

4. Ram Dayal S/o Ram Adhin Sahu, Aged about 48 Years,

Appellants No.3 & 4 are R/o Village Mukundpur, Bhatkapara, Post Office Devpur, Tahsil Nagari, Civil & Revenue Distt. Dhamtari (Chhattisgarh)

---- Appellants

Versus

1. Shakil Ahmad S/o Mahmood Khan, Aged about 50 Years, R/o Churiyara Para, Nagri, Tahsil Nagri, Civil & Revenue Distt. Dhamtari, (Chhattisgarh).
2. State Of Chhattisgarh Through District Magistrate, Dhamtari, Distt. Dhamtari (Chhattisgarh)

---- Respondents

For Appellants	:	Shri Awadh Tripathi, Advocate
For Respondent No.1	:	Smt. Hamida Siddiqui, Advocate

For Respondent No.2./State : Shri O.P. Sahu, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

09/09/2016

1. The substantial question of law involved, framed and to be answered in the Second Appeal preferred by the plaintiffs is as under:

“Whether the first appellate Court was justified in dismissing the first appeal of the appellants herein by recording a finding which is perverse to the record?”

2. The plaintiffs' declaration of title, recovery of possession and permanent injunction was dismissed by the trial Court vide judgement and decree dated 22-02-2010 and the Cross Suit filed by defendant No.1 was decreed. The plaintiffs preferred an appeal under Section 96 of the CPC questioning the decree granted by dismissing the suit within application for condonation of delay as the appeal barred by 57 days delay assigning reason that there is delay in making an application and obtaining the certified copy, collecting funds for engaging a counsel and filing the appeal, therefore, delay in filing the appeal be condoned and the appeal be heard on merits.

3. The First Appellate Court vide its impugned order, rejected an application under Section 5 of the Limitation Act and consequently, dismissed the appeal. Against which the Second Appeal has been

preferred and substantial question of law has been framed and incorporated in para 1 of the judgement.

4. Shri Awadh Tripathi, learned counsel for the appellants would submit that the appellants have shown sufficient cause. Therefore, the impugned order deserves to be set aside and First Appeal be remitted to the First Appellate Court to dispose of the matter, in accordance with law.

5. On the other hand, learned counsel appearing for the respondents submit that the first appellate Court has rightly dismissed the appeal.

6. I have heard learned counsel appearing for the parties and perused the records of the case with utmost circumspection.

7. It is true that there was a delay of 57 days in filing the appeal and application for condonation of delay was filed assigning the reason but the trial Court has dismissed, as no sufficient cause was shown.

8. 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.

9. 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

¹. (1998) 7 SCC 123

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 Bengal Vs.**

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

10. Recently, the Supreme Court in the case 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 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 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.

²JT 2013 (2) SC 450

³2013 (4) B.L.J. 433

- 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.”

11. Keeping in view the principles laid down in the above-stated cases, the facts of the instant case are examined. I find from the record that the plaintiff contested the suit right from 28-8-2003 to the date of judgment of the trial Court i.e. 22-02-2010 but the delay of 57 days occurred in filing the appeal and the reasons assigned therein are sufficient for condoning the delay in filing the appeal. It is neither deliberate nor out come of malafide action and the cause shown for delay in filling the appeal is a “sufficient cause” within the meaning of Section 5 of the Limitation Act.

12. 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 dated 14-03-2013nm is hereby set aside. The delay in filing the appeal is condoned.

13. The first appeal preferred on 22-07-2010 is remitted back to the First Appellate Court. The parties are directed to appear before Additional District Judge, Dhamtari on **03-10-2016**. It is directed that the Additional District Judge to decide the appeal within three months from the date of appearance of the parties along with copy of this judgement, as the first appeal is of the year 2010.

Sd/-
(**Sanjay K. Agrawal**)
JUDGE