

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.285 of 2015**

1. Rajesh S/o Late Budhram, Aged about 32 years, Occupation-Agriculturist
2. Darbari S/o Late Punau, Aged about 57 years, Occupation-Agriculturist
3. Puniya Bai W/o Late Budhram, Aged about 42 years, Occupation-House wife

All R/o Village Bahunawagaon, P.S. & Tahsil-Bemetara, Civil & Revenue District-Bemetara (CG)

---- Appellants**Versus**

1. Bharat Prasad Pandey S/o Deendayal, Aged about 78 years, R/o Village-Achhoti, Tahsil Damdha, Civil & Revenue District Durg (CG)
2. Sarojini Bai W/o Bharat Prasad Pandey, Aged about 74 years
3. Vyas Narayan Pandey, S/o Bharat Prasad Pandey, Aged about 57 years
4. Pramod Pandey S/o Bharat Prasad Pandey, Aged about 54 years
Res.No.2 to 4 are R/o Village-Bahunawagaon, P.S. & Tahsil-Bemetara, Civil & Revenue District-Bemetara (CG)
5. State of Chhattisgarh, Through: Collector, Durg, Civil & Revenue District-Durg (CG)

---- Respondents

For Appellants	: None present
For Respondent No.1 to 4	: Mr.Sunil Otmani, Advocate
For Respondent No.5	: Ms Ashtha Shukla, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****16/09/2016**

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 was justified in dismissing the appeal filed under Section 96 of the Code of Civil Procedure by recording findings which

are perverse and contrary to the record ?”

2. Suit filed by the plaintiffs was dismissed by the trial Court on 15.3.2011. Two plaintiffs namely Rajesh and Budhram and one Puniya Bai, new appellant preferred an appeal under Section 96 of the CPC along with an application for condonation of delay in filing the appeal stating that they were not aware about passing of the decree by the trial Court. Reply to the application for condonation of delay was duly filed by the defendants. Ultimately, the First Appellate Court rejected the application filed by the plaintiffs and one Puniya Bai under Section 5 of the Limitation Act by the impugned order and thereby dismissed the first appeal also.

3. Against which, this second appeal under Section 100 of the CPC has been filed and substantial question of law formulated has been mentioned in opening paragraph of this judgment.

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

5. It is true that the trial Court dismissed the suit filed by the plaintiffs on 15.3.2011, however, partly allowed the counter-claim filed by the defendants. Against which, Punia Bai, new appellant, plaintiffs Rajesh and Budhram have preferred the first appeal along with an application for condonation of delay stating that they were not aware about passing of the decree on 15.3.2011 and when the judgment and decree was filed before the Executing Court, thereafter they obtained certified copy of the judgment and decree on 29.9.2013 and preferred an appeal on 29.10.2013 with delay of two years and seven months. Said application was duly supported by an affidavit. The defendants have also filed the reply holding that no sufficient cause has been shown. However, no affidavit in support of the reply was filed by the defendants.

6. The First Appellate Court neither held any enquiry nor accepted the averments made in the application, which is duly supported by an affidavit. No counter affidavit was filed by the defendants herein.

7. Counter-claim filed by the defendants was allowed by the trial Court directing that the defendants are title holder of the suit land. In such a situation, the First Appellate Court ought to have condoned the delay as sufficient cause has been shown for delay in filing the appeal.

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 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

1 (1998) 7 SCC 123

in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigatin). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilaory tactics but seek their remedy promptly. The idea is that every legal remedy must be kep 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 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 sufficiper 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

² JT 2013 (2) SC 450

³ 2013 (4) B.L.J. 433

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.”

11. Keeping in view the principles laid down in the above-stated cases, the facts of the instant case are examined, I find that reason assigned by the plaintiffs for delay in filing the appeal was sufficient as they were not aware about passing of the judgment and decree of the trial Court.

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 4.3.2015 passed by the District Judge, Bemetara in Civil Appeal No.41A/2013 is hereby set aside. The delay in filing the appeal is condoned. Civil Appeal is restored to the original file of the District Judge, Bemetara for hearing and disposal of appeal on merits in accordance with law. Since the appeal was filed on 29.10.2013, the First Appellate Court is directed to decide the appeal within three months from the date of receipt of copy of this order.

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

Sd/-

(Sanjay K Agrawal)
Judge

B/-