

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 183 of 2005**

Holsai Satnami, S/o Anjor Das Satnami, Aged about 54 years, R/o village Dhikudiya, Tehsil Dhamdha, District Durg (C.G.).....Plaintiff

**---- Appellant****Versus**

1. Darwan, Son & L.R. Of Late Sowa Satnami (the defendant in civil suit since dead), aged about 40 years, R/o. Village Ufara, Tehsil & District Durg (C.G.)
2. Tulsi Ram Satnami (deceased) through LRs.
  - a. Pancho Bai, W/o Tulsi Ram Satnami, aged about 75 years,
  - b. Ashwani Kumar Mahilang, S/o Tulsi Ram Satnami, aged about 50 years.
  - c. Ashok Kumar, S/o Tulsi Ram Satnami, aged about 45 years,
  - d. Ankalha, S/o Tulsi Ram Satnami, aged about 38 years,

All R/o. village Dhikudiya, Tahsil Dhamdha, District Durg (C.G.)
3. Rajulal, S/o Hirapan Satnami, aged about 58 years, R/o Street No.29, Block No.1, Sector 1, Bhilai, Tehsil & District Durg (C.G.)
4. State of Chhattisgarh, through Collector, Durg District Durg (C.G.)

**---- Respondents**


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For Appellant : Mr. M.P.S. Bhatia, Advocate.

For respondents No. 2(a), to 2(d) : Mr. Utsav Maheshwar, Advocate.

For respondent No. 4 : Mrs. Astha Shukla, PL

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**Hon'ble Shri Justice Sanjay K. Agrawal****Order On Board****15/09/2016**

- (1) With the consent of the parties, the matter is heard finally.
- (2) The substantial question of law formulated and to be answered by

this Court in the plaintiff's second appeal is as under:-

“Whether the first appellate Court was justified in dismissing the first appeal on the ground of limitation particularly when the delay part has been explained in paragraph 7 of the memo of appeal by the appellant ?”

*[For sake of convenience, the parties would be referred hereinafter as per their status shown in the plaint before the trial Court]*

(3) The trial Court, by its judgment & decree dated 3.2.2004 dismissed the suit filed by the plaintiff.

(4) Feeling aggrieved & dissatisfied with the judgment & decree passed by the trial Court, plaintiff preferred first appeal before the first appellate Court on 14.06.2004 along with an application for condonation of delay in filing the appeal explaining the delay of 23 days in filing the appeal.

(5) The first appellate Court, vide its impugned order dated 12.08.2004, has dismissed the first appeal holding that no sufficient cause has been shown for delay in filing the appeal.

(6) Impugning the legal acceptability and sustainability of the order dated 12.08.2004 passed by the First Appellate Court, the second appeal under Section 100 of the CPC has been preferred by plaintiff (appellant herein), which has been admitted for final hearing on the substantial question of law as stated in opening paragraph of this judgment.

(7) Mr. M.P.S. Bhatia, learned counsel appearing on behalf of the appellant/plaintiff would submit that civil suit filed by the plaintiff was dismissed on 3.2.2004; appellant/plaintiff applied for certified copy of the judgment & decree on 04.02.2004, which was supplied to him on 23.04.2004 and the appellant was required to prefer an appeal up to

22.05.2004 but from 17.05.2004 to 11.06.2004, the Civil Court was closed on account of summer vacation and on 12.06.2004 being non-working Saturday and on 13.06.2004 being Sunday and thus in the summer vacation, the Civil Appeal could not be filed by the appellant/plaintiff and he preferred first appeal on 14.06.2004 and, therefore, the appeal was within limitation and it could not have been dismissed showing no sufficient cause for delay in filing the appeal as there is no inaction or malafide on the part of the appellant in preferring the appeal and therefore, judgment & decree passed by the first appellate court deserved to be dismissed and the matter may be remanded back to the first appellate Court for hearing and disposal of appeal on merits in accordance with law.

(8) Mr. Utsav Maheshwar, learned counsel for respondents No. 2 (a) to 2(d) would submit that the First Appellate Court has rightly rejected the application under Section 5 of the Limitation Act the thereby dismissal of first appeal is well merited.

(9) I have heard learned counsel appearing for the parties and perused the records of both the Courts below with utmost circumspection.

(10) It is true that there was delay of 23 days in filing the appeal but according to counsel for the appellant, the appellant could not prefer first appeal right in time on account of closure of Civil Court due to summer vacation from 17.05.2004 to 11.06.2004 and on 12.06.2004 being non-working Saturday and on 13.06.2004 being Sunday, and immediately after re-opening of the Civil Court i.e. On 14.06.2004, the first appeal was filed by the appellant

(11) 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.

(12) In case of **N. Balakrishnan V. M. Krishnamurthy**<sup>1</sup>, 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

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1 (1998) 7 SCC 123

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].”**

(13) Recently, the Supreme Court in the case of **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and others<sup>2</sup>** 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<sup>3</sup>**. 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.

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<sup>2</sup> JT 2013 (2) SC 450

<sup>3</sup> 2013 (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."

(14) Keeping in view the principles laid down in the above-stated cases, the facts of the instant case is examined, I find from the record that civil

suit filed by the plaintiff was dismissed on 3.2.2004; appellant/plaintiff applied for certified copy of the judgment & decree on 04.02.2004, which was supplied to him on 23.04.2004 and the appellant was required to prefer the appeal up to 22.05.2004 but from 17.05.2004 to 11.06.2004, the Civil Court was closed on account of summer vacation and on 13.06.2004 being non-working Saturday and on 13.06.2004 being Sunday. It is neither deliberate and nor out come of malafide action and the cause shown for delay in filling the application is an a “sufficient cause” within the meaning of Section 5 of the Limitation Act.

(15) 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 12.08.2004 is hereby set aside. The delay in filing the appeal is condoned. The First Appeal (Holsai Satnami Vs. Darwan & others) is restored to the original file of Second Additional District Judge, Durg for hearing and disposal of appeal on merits in accordance with law.

(16) The parties are directed to appear before the Second Additional District Judge, Sakti, District Janjgir-Champa on 18<sup>th</sup> October, 2016. The First Appellate Court is directed to decide the appeal on merits expeditiously preferably within a period of three months from the date of receipt of copy of this order as the judgment & decree of the trial Court was passed way back on 03.02.2004.

(17) A decree be drawn accordingly.

Sd/-

(Sanjay K. Agrawal)  
Judge

