

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.11 of 2015**

1. Meenabai, W/o. Baboolal Kumhar, aged about 40 years,
 2. Harish S/o. Baboolal Kumhar, aged about 17 years,
 3. Rajesh, S/o. Baboolal Kumhar, aged about 15 years
 4. Ku.Madhuri D/o. Baboolal Kumhar, aged about 12 years,
- Appellants 2 to 4 through their natural guardian mother Meeenabai
- All R/o. Village Sakti, Tahsil Seepat, Civil and Revenue District Janjgir-Champa (CG)

---- Appellants**Versus**

1. Rajkumar, S/o. Ramlal Dewangan, aged about 61 years, R/o. Village Temar, Tahsil Sakti, Civil and Revenue District Jajgir-Champa (CG)
 2. Doojram, S/o.Radhelal Kumhar, aged about 36 years,
 3. Battulal, S/o. Radhelal Kumhar, aged about 33 years,
- Respondents 2 to 3 are R/o. Village Sothi, Tahsil Sakti, Civil and Revenue District Janjgir-Champa (CG)
4. State of Chhattisgarh through Collector Janjgir, District Janjgir-Champa (CG)

---- Respondents

For Appellants	: Mr.Anand Kumar Gupta, Advocate
For Respondent No.1	: Mr.Pankaj Agrawal, Advocate
For Respondents No.2 &3	: None present
For Respondent No.4	: Mr.Satish Gupta, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****10/08/2016**

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 on the ground of limitation or should have considered the delay in proper

perspective ?”

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

- (i) The plaintiffs suit for declaration of title and permanent injunction was dismissed by the trial Court by the judgment and decree dated 12.12.2012.
- (ii) Against which, the plaintiffs preferred an appeal before the First Appellate Court on 20.2.2013 along with an application for condonation of delay as there was delay of 28 days in filing the appeal.
- (iii) By the impugned order, the First Appellate Court has rejected the application under Section 5 of the Limitation Act and also dismissed the appeal consequently.
- (iv) Against which, the present second appeal has been filed and question of law formulated has been mentioned in opening paragraph of the judgment.

3. Mr.Anand Kumar Gupta, learned counsel appearing for the appellants/plaintiffs, would submit that appellant No.1, who was required to file an appeal, was suffering from typhoid and other plaintiffs became minors and on account of said illness, she could not prefer an appeal right in time. She also filed affidavit in support of the application for condonation of delay and matter was inquired by the First Appellate Court.

4. On the other hand, Mr.Pankaj Agrawal, learned counsel appearing for respondent No.1, would submit that respondent No.1 opposed the application for condonation by filing suitable reply.

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

6. 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.

7. 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

1 (1998) 7 SCC 123

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].**"

8. 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

² JT 2013 (2) SC 450

³ 2013 (4) B.L.J. 433

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."

9. 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

the plaintiffs have clearly shown that one of the plaintiff No.1 was suffering from typhoid and therefore, she could not prefer an appeal right in time.

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 28.10.2014 passed by the First Additional District Judge, Sakti in M.J.C. No.8/2013 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, Sakti for hearing and disposal of appeal on merits in accordance with law. Since the appeal was filed on 20.2.2013, 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 subject to payment of cost of Rs.1000/- to respondent No.1.

Sd/-

(Sanjay K Agrawal)
Judge

B/-