

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.111 of 2017**

1. Maheshram S/o Gosairam, Aged About 45 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
2. Padma D/o Gosairam, Aged About 48 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
3. Uttarabai D/o Gosairam, Aged About 47 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
4. Smt. Nankunwar Wd/o Gosairam, Aged About 70 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
5. Badan Bai W/o Sonuram, Aged About 64 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
6. Darasbai D/o Sonuram, Aged About 50 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
7. Bhogsingh S/o Sonuram, Aged About 45 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
8. Lakhe Singh S/o Sonuram, Aged About 40 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
9. Usha Bai D/o Sonuram, Aged About 43 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
10. Janki Bai D/o Sonuram, Aged About 38 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
11. Lalita Bai D/o Sonuram, Aged About 35 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh
12. Shyamlal S/o Sonuram, Aged About 31 Years Caste- Gond, R/o Chiprikona, Post- Bhanwarpur, Tahsil- Basna, District- Mahasamund, Chhattisgarh(Plaintiffs)

---- Appellants**Versus**

1. Jagar Singh S/o Jaypal, Aged About 40 Years Caste- Gond, R/o Village- Parpiyapali, Post- Arang, Tahsil- Pithora, District- Mahasamund, Chhattisgarh
2. Vijay Kumar S/o Jaypal, Aged About 35 Years Caste- Gond, R/o

Village- Parpiyapali, Post- Arang, Tahsil- Pithora, District- Mahasamund, Chhattisgarh

3. Laxmi Bai Wd/o Kanhaiyalal, Aged About 70 Years Caste- Gond, R/o Village- Parpiyapali, Post- Arang, Tahsil- Pithora, District- Mahasamund, Chhattisgarh
4. State Of Chhattisgarh, Through Its Collector, Mahasamund, District Mahasamund, Chhattisgarh(Defendants)

---- Respondents

For Appellants:	Shri H. S. Patel, Advocate.
For Respondent:Nos. 1 to 3	None appears, though served.
For Respondent No. 4/State	Shri V. B. Singh, PL

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

16.08.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter refer to as Code of 1908) against the order dated 09.12.2016 passed by the 1st Additional District Judge, Mahasamund in Misc. Case No. H-12/2015), by which, the lower appellate Court has dismissed the application for condonation of delay filed by the plaintiffs under Section 5 of the Indian Limitation Act, 1963 (for brevity of the Act, 1963) and consequently dismissed the appeal.

2. The Plaintiffs suit for declaration of title and possession was decreed in part by the trial Court vide its impugned judgment dated 10.09.2015 and, consequently the decree was drawn on 21.09.2015.

3. Being aggrieved with the aforesaid judgment and decree, the plaintiffs/appellants have preferred an appeal under Section 96 of the Code of Civil Procedure, 1908, along with an application for its condonation of delay as per the provisions prescribed under Section 5 of the Act of 1963 on 05.01.2016. It is submitted by the plaintiffs in their

application filed under Section 5 of the Act of 1963 that they were not aware with regard to the delivery of judgment and decree as passed by the trial Court as their Counsel has never communicated to them with regard to the delivery of the said judgment and decree. It is submitted further in the application that when they contacted with the clerk of the Court, then only they came to know that the judgment and decree has already been delivered by the trial Court. Immediately thereafter they approached their Counsel in this regard, who, in turn, informed them that the judgment and decree has been delivered in their favour and he has already applied for obtaining the same. It is submitted further that after examining the record they came to know that the certified copy of the impugned judgment and decree as passed by the trial Court was already delivered to their Counsel on 23.10.2015. However, the said fact was not communicated to them and therefore the delay of few days occurred in filing the appeal was bona fide and therefore deserves to be condoned.

4. No reply was submitted by the Respondents with regard to the aforesaid application for condonation of delay in filing the said appeal.

5. The First Appellate Court, vide its impugned order dated 09.12.2016 has rejected the said application for condonation of delay by observing that the sufficient reasons have not been assigned while filing the appeal against the said judgment and decree of the trial Court and, consequently the appeal was also dismissed.

6. Being aggrieved, the plaintiffs have preferred this appeal and by order dated 23.02.2017, this appeal has been admitted on the following substantial question of law: -

“Whether the 1st Appellate Court erred in dismissing the

Appeal on the ground of Limitation.”

7. Shri H. S. Patel, learned Counsel for the Appellants submits that while considering the application for condonation of delay under Section 5 of the Act of 1963, the appellate Court ought to have adopted the liberal view, particularly, when there is no inordinate delay in filing the said appeal. He submits further that the application for condonation of delay as made by the appellants before the lower appellate Court was not even objected by the respondents by filing their reply, though it was controverted orally at the time of hearing. In support, Shri Patel has placed his reliance upon the decision rendered in the case of ***N. Balkrishnana Vs. M. Krishnamurty*** reported in **(1998) 7 SCC 123**.

8. I have heard learned Counsel for the Appellant and perused the entire records of the Court below carefully.

9. Perusal of record would show that for obtaining the certified copy of impugned judgment and decree, an application was made on 19.10.2015 and copy was accordingly delivered on 23.10.2015. The appeal was filed on 05.01.2016 by questioning the judgment and decree of the trial Court. It was therefore filed by 72 days' delay, along with an application for condonation of delay as per the provisions enumerated under Section 5 of the Act of 1963. The lower appellate Court while adopting hyper-technical view has rejected the said application and consequent upon the decree. However, perusal of the record would show that there was no inordinate delay by questioning the propriety of judgment and decree as passed by the trial Court and the reasons assigned in the application are bona fide therefore, under such circumstances, the lower appellate Court should have condoned the delay in filing the appeal by adopting liberal view.

10. In the matter of N. Balkrishnan Vs. M. Krishnamurthy (supra), it has been held by the Supreme Court that sufficient cause has to be construed liberally especially when the delay is not deliberate and mala fide. Relevant paragraphs 11 and 12 of the said judgment reads 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 lifespan 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. Teh Administrator, Howrah Municipality* [AIR 1972 SC 749].”

11. In view of the facts and circumstances of the case and in the light of the principles laid down in the above mentioned case, this Court is of the considered opinion that the first appellate Court has committed illegality in rejecting the application filed under Section 5 of the Act of 1963. The

impugned order/judgment dated 09.12.2016 is, therefore, set aside. The delay in filing the appeal is hereby condoned. The first appeal is restored to its original file preferred before the 1st Additional District Judge, Mahasamund for hearing and disposal of appeal on merits in accordance with law.

12. The appellants are hereby directed to appear before the first Additional District Judge, Mahasamund on 12.09.2017. The first appellate Court is directed to issue fresh notice to the Respondents immediately upon receiving the record and decide the appeal in accordance with law.

13. There shall be no order as to costs.

14. Registry is directed to send back the entire record to the concerned appellate Court forthwith.

Sd/-
(Sanjay Agrawal)
JUDGE

Nikita