

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.441 of 2016**

1. Shyam Lal Jogi S/o Late Shri Mahesh Ram Jogi, Aged About 46 Years Caste Satnami, R/o Village Markadih, Post Office Kapan, Via Naila, District Janjgir-Champa, Chhattisgarh
2. Sarju Prasad Jogi (Wrongly Mentioned As Suraj Prasad Jogi In The Impugned Order) Aged About 40 Years, Son Of Late Shri Mahesh Ram Jogi, Caste Satnami, R/o Village Markadih, Post Office Kapan, Via Naila, District Janjgir-Champa, Chhattisgarh
3. Gend Ram Jogi S/o Late Shri Mahesh Ram Jogi, Aged About 50 Years Caste Satnami, R/o Village Markadih, Post Office Kapan, Via Naila, District Janjgir-Champa, Chhattisgarh(Plaintiffs)

---- Appellants**Versus**

1. Branch Manager, Jila Sahkari And Gramin Vikas Bank Maryadit, Branch Baloda, District Janjgir-Champa, Chhattisgarh
2. Ram Kumar S/o Late Shri Bahoran, Aged About 40 Years Caste Satnami, R/o Village Rasota, Post Baloda, Tahsil And Police Station Baloda, District Janjgir-Champa, Chhattisgarh(Defendants)

---- Respondents

For Appellants:	Shri BL Bharadwaj, Advocate.
For Respondent No.1:	Shri Vikash Pandey, Advocate
For Respondent No.2:	None though served.

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

13.09.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') against the judgment/order dated 02.07.2016 passed by the District Judge, Janjgir-Champa in M.J.C No.12/2015 whereby the lower appellate Court, while rejecting the Plaintiffs' application for condonation of delay in filing the Appeal under Section 5 of Indian Limitation Act, 1963, has dismissed the Appeal while maintaining the judgment and decree dated

21.8.2015 passed by the Civil Judge, Class-1, Janjgir-Champa in Civil Suit No.18-A/2014.

2. The undisputed facts of the case are that the Plaintiffs' suit for redemption of immovable property was dismissed by the trial Court by its judgment and decree dated 21.8.2015 in Civil Suit No.18-A/2014.

3. Being aggrieved with the aforesaid judgment and decree, the Plaintiffs/Appellants have preferred an Appeal on 01.10.2015 and since some delay is there in filing the same, therefore, an application for condonation of its delay as required under Section 5 of the Indian Limitation Act, 1963 was also filed. The said application was not controverted by the Respondents.

4. After considering the aforesaid application, the trial Court has rejected the same by its impugned judgment/order dated 2.7.2016 by observing that no reasons have been assigned for explaining each days' delay in filing the Appeal. Accordingly, the application was rejected and consequent upon that the Appeal preferred under Section 96 was also dismissed.

5. Being aggrieved, the Plaintiffs have preferred this Appeal. By order dated 01.09.2016, this Appeal has been admitted on the following substantial question of law:-

“Whether the first appellate court was justified in dismissing the first appeal barred by limitation by recording a finding which is perverse to the record ?”

6. Mr. BL Bharadwaj, learned Counsel for the Appellants submits that the lower appellate Court ought to have adopted a liberal view while entertaining the application for condonation of delay particularly when there was just 6 days' delay in filing the Appeal. However, the appellate

Court, while adopting hyper-technical view, has erred in rejecting the same. He therefore submits that the judgment/order impugned may be set aside and the lower appellate Court may be directed to decide the Appeal on merits.

7. Shri Vikas Pandey, learned Counsel for Respondent No.1 has supported the order impugned by submitting that since no sufficient reasons were assigned while filing the application for condonation of delay in filing the Appeal, therefore, it was rightly dismissed by the Court below.

8. I have heard learned Counsel for the parties and perused the entire record carefully.

9. The Plaintiffs' suit for redemption of immovable property was dismissed by the trial Court by its judgment and decree dated 21.8.2015. Immediately after the delivery of the said judgment, an application for obtaining the certified copy of the same was filed on 10.9.2015 and accordingly, it was delivered on 15.9.2015. After obtaining the certified copy of the trial Court, an Appeal was preferred on 1.10.2015, therefore, the delay of 6 days' and not 11 days was occurred in filing the Appeal. Since there was a few days' delay in filing the Appeal, therefore, under such circumstances, the appellate Court, in order to provide substantial justice to the parties, ought to have adopted liberal view while entertaining the said application for condonation of delay. However, the lower appellate Court, by adopting a hyper-technical view, has dismissed the Appeal by refusing to condone the delay of few days in filing the same even without considering the fact that whether the alleged delay has been deliberately made by the Appellant while preferring the Appeal. In absence of such a finding, the appellate Court has committed illegality in refusing to condone

the delay of few days in preferring the Appeal. The judgment/order impugned under such circumstances cannot be held to be sustainable.

10. In the matter of N. Balkrishnan Vs. M. Krishnamurthy reported in **(1998) 7 SCC 123**, 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 read 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 view of the

principles laid down in the aforesaid judgment, the order impugned deserves to be and is hereby set aside. Consequently, I answer the substantial question of law framed on 01.09.2016 in the negative by holding that while entertaining the application for condonation of delay in filing the Appeal under Section 5 of the Act of 1963, the lower appellate Court has erred in rejecting the same.

12. In the result, the delay in filing the First Appeal is accordingly condoned. The first appeal is restored to its original file preferred before the District Judge, Janjgir-Champa for hearing and disposal of the Appeal on merits in accordance with law. There shall be no order as to costs.

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

Sd/-

(Sanjay Agrawal)
JUDGE

Priya