

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.573 of 2016**

Rameshwar Prasad Kaushik S/o Mahettar Lal Suryawanshi, Aged About 53 Years R/o Ochhinapara Ratanpur, Tehsil- Kota, District Bilaspur, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Rudra Kumar S/o Raj Kumar Suryawanshi, Aged About 31 Years R/o Ochhinapara, Ratanpur, Tehsil- Kota, Distt. Bilaspur, Chhattisgarh
2. Ajay Kumar S/o Raj Kumar Suryawanshi, Aged About 35 Years R/o Ochhinapara, Ratanpur, Tehsil- Kota, Distt. Bilaspur, Chhattisgarh
3. Smt. Chitrekha Bai W/o Raj Kumar Suryawanshi, Aged About 55 Years R/o Ochhinapara, Ratanpur, Tehsil- Kota, Distt. Bilaspur, Chhattisgarh
4. State Of Chhattisgarh, Through Collector, Bilaspur, District Bilaspur, Chhattisgarh(Defendants)

---- Respondents

For Appellant:	Shri Sanjay Patel, Advocate.
For Respondent Nos.1 to 3:	Shri SP. Sahu, Advocate.
For Respondent No.4/State:	Shri V. B. Singh, Panel Lawyer.

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

30.08.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter refer to as 'the CPC') against the judgment and decree dated 12.8.2016 passed by the 6th Additional District Judge, Biaspur in Civil Appeal No. 12-A/2011 by which, the lower appellate Court, while refusing to condone the delay in filing the Appeal, has dismissed the Appeal while affirming the judgment and decree of the trial Court dated 01.2.2011 passed by the Civil Judge, Class-II, Kota, District Bilaspur in Civil Suit No.193-A/2007.

2. The Plaintiff's suit for declaration of title and possession was

dismissed by the trial Court vide its impugned judgment and decree dated 01.02.2011.

3. Being aggrieved with the aforesaid judgment and decree, the Plaintiff/Appellant has preferred an appeal on 12.05.2011 under Section 96 of CPC along with an application for its condonation of delay in filing the same. After considering the said application, the lower appellate Court has refused to allow the same and consequently, dismissed the Appeal.

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

5. Being aggrieved, the Plaintiff has preferred this appeal and by order dated 07.02.2017, this appeal has been admitted on the following substantial question of law: -

“Whether the 1st Appellate Court has erred in law in dismissing the First Appeal simply on the ground of Limitation.?”

6. After passing of the judgment and decree dated 01.02.2011 by the trial Court, the Plaintiff has preferred the Appeal on 12.05.2011. Since the Appeal was barred by 15 days, therefore, an application for condonation of delay was also made under Section 5 of the Indian Limitation Act, 1963 by submitting *inter alia* that since the Plaintiff was an illiterate person and was under an impression that the requisite period for filing the Appeal was 90 days and therefore, could not have filed the Appeal in time. He prays that the delay may be condoned.

7. The aforesaid application for condonation of delay was opposed orally by the Defendants No.1 to 3. After considering the said application, the lower appellate Court has held that since each day's delay has not

been explained properly, therefore, the application for condonation of delay in filing the Appeal cannot be allowed and as a consequence, the lower appellate Court has dismissed the Appeal.

8. While dismissing the Appeal, the lower appellate Court has erred in observing the contents of the application for condonation of delay of 15 days in filing the Appeal in hyper-technical view and unlike, it should have taken a liberal view so as to advance the substantial justice to the parties. Without considering the application in its proper manner, the lower appellate Court has erred in refusing to condone the delay in filing the Appeal.

9. 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 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].”

10. 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. Consequently, I answered the substantial question of law framed on 07.02.2017 in the affirmative. The impugned order/judgment dated 12.08.2016 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 6th Additional District Judge, Bilaspur for hearing and disposal of appeal on merits in accordance with law.

11. The parties are hereby directed to appear before the 6th Additional District Judge, Bilaspur on 20.11.2017. There shall be no order as to costs.

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

Sd/-
(Sanjay Agrawal)
JUDGE