

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 161 of 2017**

- Jagdish S/o Late Shri Jharokha Nirmalkar, Aged About 55 Years R/o Charbhata, Kawardha, District Kabirdham, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Mohan S/o Late Jharokha Nirmalkar, Aged About 57 Years R/o Charbhata, Kawardha District Kabirdham, Chhattisgarh
2. Sushila D/o Late Jharokha Nirmalkar, R/o Rajdeep Colony Kawardha, District Kabirdham, Chhattisgarh
3. State Of Chhattisgarh, Through Collector, District Kabirdham, Chhattisgarh(Defendants)

---- Respondents

For Appellant	:	Shri Ravish Verma, Advocate.
For Respondents No.1 & 2:		Shri Prateek Kumar Singh, Advocate.
For Respondent No.3/State:		Shri V.B.Singh, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****30/08/2017**

1. This is plaintiff's second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment / order dated 16.01.2017 passed by the District Judge, Kabirdham, whereby the lower appellate Court, while refusing to condone the delay in filing the Civil Appeal, has dismissed the same by affirming the judgment and decree dated 30.01.2016 passed by the 3rd Civil Judge, Class-1, Kabirdham, in Civil Suit No. 33-A/2013.

2. The plaintiff's suit for declaration of title, partition and for possession was dismissed by the trial Court vide its judgment and decree dated 30.01.2016. Being aggrieved with the aforesaid judgment and decree, the plaintiff had preferred an

appeal on 26.03.2016 along with an application for condonation of delay, as required under Section 5 of the Indian Limitation Act, 1963 (for short 'the Act of 1963') as there was delay of 18 days in filing the same. It is stated therein that he was not well, therefore, he could not have filed the said appeal in time. The application was duly supported by an affidavit. The reply to the said application was filed by the respondents No. 1 & 2 on 28.11.2006 and that by considering the said application, it was refused and consequently the appeal was also dismissed by the appellate Court vide its impugned judgment/order dated 16.01.2017.

3. Being aggrieved, the plaintiff has preferred this appeal, which is admitted by this Court vide order dated 16.03.2017 by framing the following substantial question of law:

“Whether the lower appellate Court erred in dismissing the appeal on the ground of limitation.”

4. Shri Ravish Verma, learned counsel for the appellant submits that while entertaining the application for condonation of delay in filing the appeal and particularly when there is no inordinate delay in filing the same, the lower appellate Court ought to have adopted a liberal approach in considering the same. However, while adopting a hyper-technical view, the lower appellate Court has refused to condone the delay in filing the appeal, therefore, order impugned deserves to be quashed. In support, he placed his reliance upon ***N. Balakrishnan v. M. Krishnamurthy***, reported in **(1998) 7 SCC 123**.

5. Shri Prateek Kumar Singh, counsel for respondents No. 1 & 2 has opposed said prayer and submitted that there is no infirmity in the order impugned passed by the lower appellate Court in refusing to condone the delay, therefore, the present appeal deserves to be dismissed.

6. I have heard learned counsel for the parties and perused the entire record carefully.

7. The plaintiff's suit for declaration of title, partition and for possession was dismissed by the trial Court vide its judgment and decree dated 30.01.2016. By questioning the same, an appeal was preferred by the plaintiff on 26.03.2016. Since there is some delay in filing the same, therefore, an application for condonation of delay was filed by submitting therein that since he was not feeling well, therefore, the appeal could not be filed in time. The said application was required to be considered by the lower appellate Court liberally, in order to advance the substantial justice to the parties. However, the same was refused by adopting hyper technical view by the lower appellate Court, which cannot be sustained in the eye of law. In the matter of **N. Balakrishnan v. M. Krishnamurthy**, reported in **(1998) 7 SCC 123**, the Supreme Court held at paras 11 and 12 as under:

“11. Rules of limitation are not meant to destroy the rights 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 up 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. The 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 v. Kuntal Kumari*, AIR 1969 SC 575 and *State of W.B. v. Administrator, Howrah Municipality*, (1972) 1 SCC 366.”

8. In view of the aforesaid facts and circumstances and in the light of the principles laid down in the aforesaid judgment, this Court is of the considered opinion that the first appellate Court has committed illegality in refusing the application for condonation of delay in filing the appeal filed under Section 5 of the Act of 1963. Consequently, I answer the substantial question of law framed on 16.03.2017 in the affirmative by holding that the appellate Court has committed an

illegality in dismissing the application for condonation of delay in filing the appeal. Accordingly, I am inclined to allow the said application. The delay in filing the appeal is accordingly condoned. The judgment and order dated 16.01.2017 passed by the lower appellate Court while refusing to condone the delay is hereby set aside. The First Civil Appeal (Jagdish vs. Mohan & others) is restored to the original file of District Judge, Kabirdham for hearing and disposal of appeal on merits in accordance with law.

9. Parties are directed to appear before the District Judge, Kabirdham, on 20.11.2017. The first appellate Court is directed to decide the appeal on merits in accordance with law.

10. Registry is directed to send back the entire record to the concerned appellate Court forthwith. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge