

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 125 of 2016

(Arising out of judgment/order dated 28.04.2009 in Civil Suit No.
01/B/2008 of the learned IInd A.D.J Bilaspur)

- Abida Ansari D/o Shri Shahabuddin Ansari, Aged About 40 Years
R/o Ganesh Nagar, Main Road, Annapurna Vihar Colony
Bilaspur, P.S.- Sirgitti, & Tahsil- Bilaspur, Civil- Revneue Distt. And
Distt. Bilaspur, Chhattisgarh.

---- Petitioner

Versus

- Tushar Kanti Ghosh S/o Late Shri Sunil Kumar Ghosh, Aged
About 53 Years P/o - L.M.I.I.T. Computer Unit Bilaspur, R/o Indira
Colony, Tarbahar, Bilaspur, P.S.- Tarbahar, & Tahsil- Bilaspur,
Civil-Revenue Distt. And Distt. Bilaspur, Chhattisgarh.

---- Respondent

For Appellant	Shri G.M Hasan, Advocate.
For Respondent	Shri A.N. Bhakta, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/10/2017

I.A.Nos.1 & 3

These are the applications for condonation of delay in filing the first appeal.

1. The appellant has suffered a decree for recovery of arrears of rent to the tune of Rs. 60,000/- vide impugned judgment and decree dated 28.04.2009.
2. The present first appeal is filed on 07.04.2016 which is barred by 2441 days. The appellant has moved two

applications for condonation of delay in filing the appeal. In the first application I.A. No.1 of 2016, it is stated that the appellant was married with Aasif Ali resident of Bhopal on 5th of June, 2009 and shifted to Bhopal to stay at her matrimonial home, therefore, she was not aware about all the progress of the civil suit after 5th of June, 2009 nor her counsel informed her about the decision. In the second application I.A. No.3 of 2017, she would state that after she shifted to Bhopal her father, an old retired Government Servant, suffered paralytic attack in the year 2012 and therefore she could not take steps to file the appeal because of illness of her father.

3. Shri Hasan, learned counsel for the appellant would reiterate the above reasons in support of his argument for condonation of delay.
4. Per contra Shri Bhakta, learned counsel for the respondent would submit that the delay being enormous and the appellant having not offered proper explanation in support of prayer for condonation of delay and, as such, the application deserves to be dismissed.
5. Order sheets of the trial Court would indicate that the plaintiff closed his evidence on 06.03.2009, the suit was thereafter posted for recording defence evidence on 20.03.2009, 25.03.2009 and 10.04.2009. However, on all the above dates the defendant's witnesses were absent, therefore, her evidence was closed on 10.04.2009 and the final arguments were heard on 22.04.2009. The judgment was thereafter delivered on 28.04.2009.
6. On all the above dates, the defendant was represented by her counsel. Her marriage was solemnized on 5th of June 2009 i.e. after about two months from the date when her

evidence was closed by the trial Court.

7. It is thus apparent that the appellant was negligent during the progress of the suit as well as after the passing of the impugned judgment. Her father suffered paralytic attack in the year 2012, the month or date of the said event is not mentioned in the application.
8. Be that as it may, after her father suffered paralytic attack the appellant must have visited Bilaspur and even prior to that she must have visited Bilaspur every now and then from the April 2009 till April 2016, when the appeal was filed. The application is conspicuously silent as to why during all these years the appellant did not contact her lawyer to seek information about progress of the suit in which she was a party and has filed the written statement.
9. In the above view of the matter, this Court is of the considered opinion that the explanation offered to seek condonation of delay of 2441 days lacks bona fide, therefore, the appellant is found to be negligent in defending the suit. Therefore, the said enormous delay of 2441 days does not deserve to be condoned.
10. Accordingly, the interlocutory applications I.A. No.1 and I.A. No.3 filed under Section 5 of the Limitation Act deserves to be and is hereby dismissed.
11. Consequently, the first appeal is also dismissed.

Sd/-

Judge
Prashant Kumar Mishra