

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.92 of 2016**

- Panchanan Rana S/o Shri Akshay Kumar Rana, Aged About 65 Years R/o 27 Kholi Chowk, Vikas Nagar, Bilaspur, Tehsil And District Bilaspur, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Holaram @ Holamal S/o Gidhumal Peswani, Aged About 87 Years R/o Sindhi Colony Jarhabhata, Bilaspur, Tehsil And District Bilaspur, Chhattisgarh
2. Suresh Peswani S/o Holaram @ Holamal, Aged About 45 Years R/o Sindhi Colony Jarhabhata, Bilaspur, Tehsil And District Bilaspur, Chhattisgarh
3. Totaram Peswani S/o Holaram @ Goghumal Peswani, Aged About 75 Years R/o Ameri, Tehsil Takhatpur, District Bilaspur, Chhattisgarh
4. State Of Chhattisgarh, Through: The Collector Bilaspur, District Bilaspur, Chhattisgarh(Defendants)

---- Respondents

For appellant	: Shri MD Sharma, Advocate
For respondents 1 & 2	: Shri Anil S Pandey, Advocate
For respondent No.3	: Shri Ratnesh Kr. Agrawal, Advocate
For respondent No.5	: Smt. Shobha Kashyap, Dy. GA.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****13.01.2017**

Heard on IA No.01/16 under Order 41 Rule 3A read with Section 5 of the Limitation Act and Order 43 Rule 2 of Code of Civil Procedure, 1908 (for short 'the Code') for condoning the delay of 117 days as the instant appeal has been filed under Order 43 Rule 1(r) against the order dated 09.3.2016 passed by the court below in civil suit No.359A/14 whereby and whereunder the learned trial Court dismissed the application filed by the

appellant/plaintiff under Order 39 Rule 1 & 2 read with Section 151 of the CPC.

2. Learned counsel for the appellant would submit that as the appellant/plaintiff was not aware of order passed on 09.3.2016 as the counsel engaged by him did not tell him about passing of the order and on 31.8.16 respondents 1 & 2 came to the house of the appellant, informed him regarding passing of the order on 09.3.16 whereby injunction application of the applicant was rejected by the court and asked the appellant to give possession of the said suit land. Thereafter the appellant enquired about this from his counsel and applied for certified copy of the order on 01.9.16 and the said copy was delivered to him on 06.9.2016, thereby the delay has been occurred, hence delay of 117 days in filing the appeal may be condoned and the matter may be heard on its merits.

3. Learned counsel has placed reliance on **AIR 1981 SC 1400, Rafiq and another v. Munshilal and another**, wherein the apex Court hearing on a matter wherein the appeal was dismissed for default of the appellant's counsel, set aside the dismissal and directed that cost to be recovered from the appellant's counsel who absented himself. Further placed reliance on **AIR 1998 SC 3222 N. Balakrishnan vs. Krishnamurthy**, wherein the apex court condoned the delay of 833 days in filing the application for setting aside ex-parte decree as the said delay caused due to failure of the advocate to inform the appellant as well as the failure

to take action. Further placed reliance on **2008 (2) CGLJ 172 Gulab Chand Soni vs. Bankelal Soni**, wherein upon hearing of the matter arising out of order the High Court observed that the appellant/ defendant ought not penalized for the default on the counsel imposed the cost and allowed the appeal. Further placed reliance on **1955 SCR 1 Sangram Singh vs. Election Tribunal, Kotah, Bhurey Lal Baya**, wherein the Hon'ble Apex Court held that :-

“Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. To technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.”

4. Learned counsel for the appellant also placed reliance on **AIR 2015 SC 3573, Banwari Lal (D) By LRs. & Anr. vs. Balbir Singh**, wherein the Apex Court on hearing of the matter arising out of dismissal of second appeal for non prosecution condoned the delay, set aside the abatement and also directed that appeal may be restored on payment of cost. Also placed reliance on the Order dated 29.7.2015 passed in Second Appeal No.212/05 wherein this Court upon hearing of the application under Order 22 Rule 3 of the CPC, under Order 22 Rule 9 of the CPC and under Section 5 of the Limitation Act for condonation of delay in filing the application for substitution of LRs of sole appellant, allowed the application though preferred after 2269 days of its limitation.

5. Learned counsel for the appellant would submit that in the light of the above case law cited, delay may be condoned and the matter may be heard on its merits.

6. Perused the impugned order dated 09.3.2016. It appears that the appellant /plaintiff was represented through his counsel. As per the facts mentioned in IA No.01/16, the counsel had not informed about this order to the appellant, there is no disclosure of the facts whether the appellant has taken any steps for cause of learned counsel for not informing the appellant regarding the order passed on application under Order 39 Rule 1 & 2 CPC and also for not taking appropriate steps after the order has been passed. The matter is pending since 2006 before the trial Court. The appellant is required to explain the delay satisfactory in the matter.

The case laws cited here are not applicable in the present matter as those were in relation with dismissal of the second appeal or any other matter finally. In the present matter, the said interim application has been disposed of and the suit is yet to be heard on its merits.

7. On due consideration, as the case laws cited are not applicable and the delay caused by 117 days in filing the appeal against the order passed against order 39 rule 1 & 2 CPC, I am not inclined to condone the delay. Consequently, IA No.01/16 is dismissed. Consequently, the appeal too is dismissed as time barred .

Sd/-

(Chandra Bhushan Bajpai)
JUDGE