

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.203 of 2013

1. Minor Ajay, S/o Rafhel, aged around 17 years, through Father Rafhel, S/o Bolo Urav, Caste Urav, R/o Village Deewanpur, Thana & Tehsil Pathalgaon, District Jashpur (C.G.)
(Defendant No.4)
2. Kirtan, S/o Bunuram, aged around 26 years, Caste Urav, R/o Village Deewanpur, Thana & Tehsil Pathalgaon, District Jashpur (C.G.)
(Defendant No.3)
---- Appellants

Versus

1. Minor Rajanti, D/o Peturam, aged around 17 years, Through next friend Jugnu, S/o Lachhu Urav, R/o Village Deewanpur, Thana & Tehsil Pathalgaon, District Jashpur (C.G.)
(Plaintiff)
2. Rijhobai, D/o Lattiram, aged around 47 years, Caste Urav, R/o Village Deewanpur, Thana & Tehsil Pathalgaon, District Jashpur (C.G.)
(Defendant No.6)
3. Dulo Bai, D/o Lattiram, aged around 49 years, Caste Urav, R/o Village Bandhanpur (Ludeg), Thana & Tehsil Pathalgaon, District Jashpur (C.G.)
(Defendant No.7)
4. Shivprasad, S/o Dileram, aged around 32 years, R/o Village Hurve, Tehsil Bhanpur, District Rajnandgaon (C.G.)
(Defendant No.1(1))
5. Sunil, S/o Dileram, aged around 27 years, R/o Village Hurve, Tehsil Bhanpur, District Rajnandgaon (C.G.)
(Defendant No.1(2))
6. State of Chhattisgarh, through Collector, Jashpur, District Jashpur (C.G.)
(Defendant No.5)
---- Respondents

For Appellants:	Mr. Sanjay Agrawal, Advocate.
For Respondent No.1:	Mr. Anand Kesharwani, Advocate.
For Respondents No.2 to 5: -	Mr. Chandresh Shrivastava and Mr. Anmol Sharma, Advocates.
For Respondent No.6/State: -	Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

24/09/2018

1. The substantial questions of law involved, formulated and to be answered in the defendants' second appeal are as under: -
 1. Whether the lower appellate Court was justified in affirming the judgment and decree of the trial Court by dismissing the appeal on the ground of limitation?
 2. Whether the lower appellate Court was justified in holding that the appellant has failed to show sufficient cause for delay in filing the appeal?
2. The suit filed by respondent No.1 / plaintiff for declaration of title, partition, separate possession and mesne profit, was decreed by the trial Court holding that the plaintiff is entitled for $\frac{1}{3}$ rd share of the suit property after partition and also entitled for possession. In that case, defendants No.3 and 4 were duly represented, but somehow, appeal could not be preferred right in time and it is said to have been preferred before the first appellate Court with a delay of 43 days. The first appellate Court rejected the application for condonation of delay finding no suffering cause in that application resulting into filing of this appeal under Section 100 of the CPC in which substantial questions of law framed have been set-out in the opening paragraph of the judgment.
3. Mr. Sanjay Agrawal, learned counsel appearing for the appellants / defendants No.3 and 4, would submit that the first appellate Court is absolutely unjustified in holding that there is no sufficient cause for delay in filing the appeal and therefore the order of the first appellate Court be set aside.
4. Mr. Anand Kesharwani, learned counsel appearing for respondent

No.1 / plaintiff, would submit that no affidavit was filed in support of the application for condonation of delay.

5. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.
6. It is well settled law that the Courts should adopt a justice-oriented approach in considering the application for condonation of delay. However, the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay.
7. In the matter of **N. Balakrishnan v. M. Krishnamurthy**¹ 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 portion of the report reads 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 life span 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

1 (1998) 7 SCC 123

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. The Administrator, Howrah Municipality* {AIR 1972 SC 749}."

8. Before the trial Court, defendant No.3 was aged about 21 years and defendant No.4 was minor aged about 10 years. Though they were represented by counsel, but it appears from the application that defendant No.3 Kirtan representing defendant No.4 Ajay – minor, fell sick and therefore could not prefer appeal right in time and even a certificate was filed that he was suffering from jaundice, therefore, he could not prefer appeal right in time and that was opposed. The first appellate Court holding that no medical certificate has been preferred and no affidavit has been filed in support of the application, rejected the application. If the first appellate Court was of the opinion that the application for condonation of delay is not supported by affidavit, it could have directed the appellants herein to file affidavit in support of the application for condonation of delay, that course was not resorted to and the application was rejected. Looking to the age of appellant No.1 herein who is minor and that appellant No.2 representing the minor fell sick, this Court is of the considered opinion that, that was sufficient to constitute sufficient cause within the meaning of Section 5 of the Limitation Act, 1963, as there is delay of 43 days in preferring appeal. Therefore, the impugned order rejecting the application for

condonation of delay in filing the appeal is set aside and delay in filing the appeal is condoned. The first appeal is restored to its original number to the file of the Additional District Judge, Kunkuri. Since the appeal was filed on 29-6-2012, the first appellate Court is directed to consider the appeal and dispose of the same after hearing the parties within three months from the date of receipt of a copy of this order. The substantial questions of law are answered in negative and the second appeal is allowed accordingly. No order as to cost(s).

9. A decree be drawn-up accordingly.

10. Record be sent back forthwith.

Sd/-
(Sanjay K. Agrawal)
Judge