

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 703 of 2017**

1. Mohan, S/o Dadu Ram, Aged About 57 Years, Caste Rajwar, R/o Village Karounti, Tahsil Odgi, District Sarguja, Chhattisgarh.
2. Lakhanram Ram, S/o Shri Daduram, Aged About 62 Years, Caste Rajwar, R/o Village Karounti, Tahsil Odgi, District Sarguja, Chhattisgarh.
3. Burdhi Ram S/o Shri Daduram, Aged About 68 Years, Caste Rajwar, R/o Village Karounti, Tahsil Odgi, District Sarguja, Chhattisgarh.
4. Tribhuwan, S/o Shri Daduram, Aged About 73 Years, Caste Rajwar R/o Village Karounti, Tahsil Odgi, District Sarguja Chhattisgarh.....Defendants

---- Appellants

Versus

1. Sundri Bai, D/o Charka, Aged About 67 Years, By Caste Rajwar, R/o Village Kapsara, Tahsil Surajpur, District Sarguja Chhattisgarh.,
2. Pyaro Bai, D/o Charka, Aged About 59 Years, By Caste Rajwar, R/o Karouti, Tahsil Surajpur, District Sarguja Chhattisgarh. R/o Village Karouti, Tahsil Odgi, District Sarguja Chhattisgarh.....Plaintiffs,

---- Respondents

For Appellants:	Shri Sushil Dubey, Advocate.
For Respondents:	Smt. Meena Shastri, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order/Judgment On Board****25.07.2018**

1. This is defendants' Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the C.P.C.) against the order dated 07.10.2017 passed by the 3rd Additional District Judge, Surajpur, Dist. Surajpur (C.G.) in CNR No.-CGSJ010001052011, by which, the lower appellate Court has rejected the application for condonation of delay in preferring the first appeal by the defendants under Section 96 of C.P.C. and consequent upon that, dismissed the appeal.

2. Brief facts leading to this appeal are that the plaintiffs instituted a suit for injunction praying for restraining the defendants from interfering with their peaceful possession with regard to the plaint Schedule-A property. Upon receiving summons of the suit, the defendants made their appearance and contested the suit and, eventually by judgment and decree dated 15.12.2010, the trial Court has decreed the suit.

3. Being aggrieved with the aforesaid judgment and decree, defendants (appellants) have preferred an appeal on 01.04.2011 under Section 96 of the C.P.C. along with an application for its condonation of delay of 77 days', as per the provisions prescribed under Section 5 of the Indian Limitation Act, 1963 (for short the Act of 1963) duly supported by an affidavit. It is submitted by the defendants in their application for condonation of delay that they were not aware with regard to the delivery of the said judgment and decree dated 15.12.2010 and came to know for the first time on 05.03.2011 when the plaintiffs disclosed in the village that they have succeeded in the suit. Upon knowing the said fact, the defendants have approached their counsel and applied for obtaining the certified copy of the said decree on 07.03.2011 and in pursuance thereof, the certified copy of the said judgment and decree was delivered on 11.03.2011 and immediately thereafter the appeal has been filed on 01.04.2011. Therefore, the delay has thus occurred bona fide and there is no mala fide intention behind it and being rustic villagers they could not prefer the appeal in time, therefore, the delay of 77 days in filing the appeal be condoned.

4. Upon receiving the notice of the said appeal, the respondents (plaintiffs) have made their appearance and thereafter the matter was

listed from time to time for filing the reply to the application for condonation of delay in filing the first appeal as well as for consideration of the application for interim relief as provided under Order 41 Rule 5 of the C.P.C. However, counsel for the respondents (plaintiffs) on 07.09.2017 has pleaded that he did not want to file any reply with regard to those applications.

5. Be that as it may, after considering the said application for condonation of delay in preferring the appeal, the lower appellate Court, vide its order impugned dated 07.10.2017, has rejected the same observing that sufficient reasons have not been assigned therein. It has also been observed that despite obtaining the certified copy of the judgment and decree of the trial Court on 11.03.2011, the defendants have not filed the appeal immediately thereafter and was filed only on 01.04.2011 without explaining any sufficient reasons of it and as a consequent of it, rejected the said application for condonation of delay and, consequently the appeal was dismissed.

6. Being aggrieved, the defendants have preferred this appeal and by order dated 21.11.2017, the appeal has been admitted on the following substantial question of law: -

“Whether the first appellate Court was justified in refusing to condone the delay in filing the defendants’ appeal preferred under Section 96 of the Code of Civil Procedure, 1908?”

7. Shri Sushil Dubey, learned counsel for the appellants/defendants submits that while considering the application for condonation of delay filed under Section 5 of the Act of 1963, the appellate Court ought to have adopted a liberal view particularly when there is no inordinate delay in filing

the appeal. He submits further that the reasons assigned in the application for condonation of delay in filing the appeal was duly supported by an affidavit and the same has not been controverted by the plaintiffs. Therefore, under such circumstances, reasons so assigned ought to have been considered by the Court below while adopting the liberal view in order to provide substantial justice to the parties. In support, he placed his reliance upon the decisions rendered in the case of ***N. Balkrishnan Vs. M. Krishnamurty*** and ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*** reported respectively in **(1998) 7 SCC 123** and **(2013) 12 SCC 649**.

8. On the other hand, Smt. Meena Shastri, learned counsel for the respondents while supporting the order impugned, submits that despite obtaining the certified copy of the said judgment and decree of the trial Court on 11.03.2011, the appeal was not filed immediately thereafter and was filed only on 01.04.2011 without assigning any sufficient and satisfactory reasons thereof and, it was, therefore, rightly rejected by the Court below. According to her further contention that since the judgment and decree of the trial Court was passed after hearing both the parties, therefore, reasons as assigned in the said application for condonation of delay that the appellants came to know for the first time on 05.03.2011 is apparently a false submission. She, therefore, submits that the person who approached the Court not with clean hands would not be entitled to get the discretionary relief from the Court. In support, she placed her reliance upon a decision rendered in the case of ***Basawaraj and another vs. Special Land Acquisition Officer*** reported in **(2013) 14 SCC 81**.

9. I have heard learned Counsel for the parties and perused the entire

record of the Courts below carefully.

10. Before advertng to the facts in hand, it is necessary to examine the provision prescribed under Section 5 of the Act of 1963 in order to answer the substantial question of law as framed hereinabove. The said provision is relevant for the purpose is reproduced herein as under:-

“5. Extension of prescribed period in certain cases. – Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

11. Perusal of the aforesaid provision makes it clear that the Legislature had left the term “sufficient cause” undefined and unillustrated for what is “sufficient cause” in one case may not be so in another case. Thus, the said term is kept elastic and unfettered discretion has been conferred on the Courts to do substantial justices considering the facts and circumstances of the case. No hard and fast rule, therefore, can be laid regarding condonation of delay. The sums and substance would be that the discretion has to be exercised judicially and the approach of the Court should be liberal and pragmatic, but not pedantic.

12. Based upon the aforesaid provision, the expression “sufficient cause” has to be construed liberally in order to provide substantial justice to the parties unless and until the appeal is preferred by an ordinate delay. Here in the instant case, the plaintiffs' claim for permanent injunction was decreed by the trial Court vide judgment and decree dated 15.12.2010.

The said judgment and decree was questioned by the defendants on 01.04.2011. There was, thus, delay of 77 days in filing the same under Section 96 of C.P.C. In order to explain the said delay, it was stated by the defendants in their application for condonation of delay as filed under Section 5 of the Act of 1963 that they were not aware with regard to the delivery of the said judgment and decree and came to know about the said fact only on 05.03.2011 when the plaintiffs disclosed in the village that they have succeeded in the suit. Perusal of the said application would show further that immediately after knowing the said fact they contacted their counsel and applied for obtaining the certified copy of the same on 07.03.2011 and in pursuance thereof, certified copy of the judgment and decree as passed by the trial Court was delivered on 11.03.2011 and the appeal was thereafter filed on 01.04.2011. Pertinently to be observed here that the reasons so assigned by the defendants while filing the application for condonation of delay duly supported by an affidavit were not controverted by the plaintiffs, despite sufficient opportunities were given. In absence thereof, the reasons as assigned by the defendants supported by an affidavit, cannot be held to be unreasonable. Besides, I do not find that there was inordinate delay in filing the appeal by questioning the propriety of the judgment and decree dated 15.12.2010 and the reasons assigned in the application appear to be bona fide and the same cannot be held to be filed in an ulterior or mala fide intention.

13. At this juncture, principles laid down in the matter of **N. Balkrishnan Vs. M. Krishnamurthy** (supra) are to be noted, wherein it has been held by the Supreme Court that sufficient cause has to be construed liberally especially when the delay is not inordinate and mala

fide. Relevant paragraphs 11 and 12 of the said judgment 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 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. Administrator, Howrah Municipality* [AIR 1972 SC 749].”

14. Yet, in the matter of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others** (supra), the Supreme Court has laid down the principles for deciding the application for condonation of delay at Para 21 as under:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented,

non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (vii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant

not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

15. On the basis of the aforesaid principles and in view of the reasonings as assigned in the application for condonation of delay, as discussed herein above, the contention of Shri Dubey deserves to be accepted that while preferring an appeal, the delay of 77 days has duly been explained by the defendants.

16. In so far as the contention of Mrs. Meena Shastri, counsel for the respondents based upon the principles laid down in the matter of **Basawaraj and another** (supra) is, however, noted to be rejected as the facts involved therein are different from the facts of this case. That is the case where an appeal was preferred under Section 54 of the Land Acquisition Act, 1894 along with an application for condonation of delay of more than 5½ years. The delay was inordinate and the only reason assigned therein was that one of the appellants was ill. Therefore, in that factual scenario, it was held by the Supreme Court that such an inordinate delay cannot be condoned unless and until sufficient reasons are shown.

17. In view of the foregoing discussions and that by applying the principles laid down in **N. Balakrishnan Vs. M. Krishnamurthy** and **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar**

Academy and others (supra), I answer the substantial question of law in the negative and, it is held that the lower appellate Court has committed an illegality in refusing to condone the delay of 77 days' in filing the appeal under Section 96 of the C.P.C. against the judgment and decree dated 15.12.2010 as passed by the trial Court.

18. Consequently, the appeal is allowed and, the impugned order dated 07.10.2017 is hereby set aside. The delay in filing the appeal is accordingly condoned. The first appeal is restored to its original file before the 3rd Additional District Judge, Surajpur, Dist. Surajpur for hearing and disposal of the appeal on merits in accordance with law. The parties are hereby directed to appear before the concerned Court on 27.09.2018. The first appellate Court is directed to decide the appeal on merits as expeditiously as possible as the judgment and decree of the trial Court was passed way back on 15.12.2010.

19. Registry is directed to send back the entire record to the concerned appellate Court forthwith. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE