

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.98 of 2018**

1. Meetram Patel Son of Late Chandram, aged about 46 years,
2. Balmakund Patel son of late Chandram, aged about 43 years,
3. Smt. Gyanmati Patel widow of late Chandram, aged about 67 years,
4. Kamlesh Patel, son of Meetram Patel, aged about 23 years,

All are resident of Village-Amori, Post-Turega, Tahsil & District-Mahasamund (CG)

---- Appellants**Versus**

1. Smt. Heera Bai daughter of late Chandram Patel, wife of Usatram Patel, aged about 49 years, resident of Village-Kolpadar, Post-Turega, Tahsil & District Mahasamund (CG)
2. Durpati widow of late Arjun Patel, aged about 70 years,
3. Shobharam son of late Arjun Patel, aged about 52 years,
4. Chaitram son of late Arjun Patel, aged about 47 years,
5. Dhaniram son of late Arjun Patel, aged about 44 years,
6. Maniram son of late Arjun Patel, aged about 34 years,

No.2 to 6 are resident of village-Amori, Post-Turega, Tahsil & District-Mahasamund (CG)

7. Malti daughter of late Arjun Patel, aged about 55 years, wife of Rameshchandra Patel, resident of Village-Kolpadar, Post-Turega, Tahsil & District-Mahasamund (CG)
8. State of Chhattisgarh, through the Collector, District Mahasamund (CG)

---- Respondents

For Appellants	:	Mr.H.S.Patel, Advocate
For Respondent No.1	:	Mr.R.S.Patel, Advocate
For Res.No.2 to 7	:	None present though served
For Respondent No.8	:	Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

24/09/2018

1. The substantial question of law involved, formulated and to be answered by this Court in this defendants' second appeal is as under:-

“Whether the lower appellate Court has committed an illegality in refusing to condone the delay in filing the First Appeal preferred under Section 96 of the Code of Civil Procedure, 1908?”

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) The plaintiff/respondent No.1 filed a suit for declaration of title and permanent injunction. In that civil suit, decree was granted on 28.3.2014 in favour of the plaintiff though the defendants were duly represented before the trial Court, but the defendants/appellants did not get any information about passing of adverse decree against them from their counsel appearing before the trial Court and when caveat notice was served by the plaintiff to the defendants on 28.4.2014 they got information about passing of decree against them and thereafter they collected the papers from their counsel and filed the appeal on 15.5.2014 along with application for condonation of delay stating inter-

alia that their counsel did not inform them about passing of decree and when information from copy of caveat received they took steps in filing the appeal and preferred the appeal. Therefore, 18 days delay in filing the appeal be condoned. The application for condonation of delay was duly supported by an affidavit, which was replied by the plaintiff, but reply was not supported by an affidavit. The First Appellate Court dismissed the appeal on the ground that no sufficient cause has been shown by the appellants/defendants. Being aggrieved and dissatisfied with the order of the First Appellate Court dismissing the appeal on the ground of limitation, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

3. Mr.H.S.Patel, learned counsel for the appellants/defendants, would submit that the First Appellate Court is absolutely unjustified in holding that no sufficient cause has been shown.

4. On the other hand, Mr.R.S.Patel, learned counsel for respondent No.1/plaintiff, would support the impugned order.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

6. It is well settled law the Courts should adopt an 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 the sufficient cause has to be construed liberally especially when the delay is not deliberate and malafide. Relevant portion of the report held 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 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

¹ (1998) 7 SCC 123

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 SC749].”

8. Recently, the Supreme Court in the matter of **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and others**² has laid down the principles for deciding application for condonation of delay, which has been followed by this Court in the matter of **Pradeep Majumdar V. Duvas Bai and others**³. Para 21 of the **Esha Bhattacharjee** (Supra) states as under:-

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

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.

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.

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

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.

² JT 2013 (2) SC 450

³ 2013 (4) B.L.J. 433

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

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.

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

viii) 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.

ix) The conduct, behavior 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.

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.

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 of limitation.

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

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

9. Reverting to the facts of the present case, it is quite vivid that though the decree was bi-party decree, but counsel for the

appellants/defendants appearing before the trial Court for the defendants did not inform about passing of decree to the defendants and when they got copy of caveat filed by the plaintiff they took steps and filed the appeal with a delay of 18 days, which appears to be bonafide and cause shown is sufficient cause. Accordingly, the substantial question of law is answered in favour of the appellants/defendants.

11. For the foregoing reasons, the impugned order dated 3.1.2018 passed by the First Appellate Court is set aside and delay in filing the appeal is condoned. The matter is remitted to the First Appellate Court for hearing and disposal of appeal in accordance with law on merits.

12. The second appeal is allowed to the extent indicated hereinabove. Since appeal was filed on 15.5.2014, the First Appellate Court is directed to conclude the hearing of appeal within a period of three months from the date of receipt of certified copy of this order. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-