

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 449 of 2017**

1. Shankar, son of Bhudayal Chandra, aged about 42 years,
2. Uttarakumar, son of Bhudayal Chandra, aged about 36 years,

Both are resident of Village-Amakoni, Tahsil – Jaijaipur, District- Janjgir-Champa (C.G.)

**---- Appellants/Plaintiffs.**

**Versus**

1. Hetram, son of Bhudayal Chandra, aged about 47 years, resident of Village-Amakoni, Tahsil-Jaijaipur, District Janjgir-Champa (C.G.)

2. Rajesh Kumar, son of Devnarayan Chandra, aged about 27 years (dead), through LRs.

- 2(i) Amrika Bai, widow of Rajesh Kumar Chandra, aged about 26 years,

- 2(ii) Bharti, daughter of Rajesh Kumar Chandra, aged about 5 years,

No. 2(i) to (iii) are resident of Village -Chhirradih, Tahsil – Jaijaipur, District Janjgir-Champa (C.G.)

3. Hemcharan, son of Devcharan Chandra, aged about 19 years, resident of Chhirradand, Odekera, Tahsil- Jaijaipur, District Janjgir-Champa (C.G.)

4. Shambhudayal, son of Bhudayal Chandra, aged about 45 years, resident of Village Amakoni, Tahsil-Jaijaipur, District Janjgir-Champa (C.G.)

5. State of Chhattisgarh, through the Collector, District Janjgir-Champa (C.G.)

**---- Respondents/defendants**

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|---------------------------------------------|---|---------------------------|
| For Appellants                              | : | Mr. H.S. Patel, Advocate. |
| For Respondents No. 2(i), 2(ii), 2(iii) & 3 | : | Mr. M.K. Baig, Advocate.  |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**28/09/2018**

(1) The substantial question of law involved, formulated and to be answered in this plaintiffs' second appeal states as under:

“Whether the lower Appellate Court has erred in not condoning the delay occurred in filing the Appeal and thereby erred in dismissing the Appeal on the ground of limitation ?

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

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The plaintiffs' suit for declaration of sale deed dated 29.03.2007 as null and void and for confirmation of possession was dismissed by the trial Court on 30.06.2014, in which, the plaintiffs applied for certified copy of the order on 02.11.2015 and received the same on 09.11.2015 the first appeal has been filed on 20.11.2015 with a delay of 404 days along with application for condonation of delay in filing the appeal stating inter alia that they were not aware about the passing of the judgment and decree of the trial Court as their counsel did not inform about the dismissal of the civil suit and as soon as he came to know about the dismissal of the civil suit from other sources, he obtained copy of the same and filed first appeal under Section 96 of the Code of Civil Procedure (henceforth “CPC”).

(3) The First Appellate Court did not found favour with the application for condonation of delay and finding no sufficient cause for delay in filing the appeal, dismissed the application for condonation of delay and consequently appeal was also dismissed. Against which, this second appeal has been preferred by the appellants/plaintiffs in which the substantial question of law formulated for consideration and which has been set out in the opening paragraph of the judgment.

(4) Learned Senior Counsel appearing for the appellant, would submit that the finding recorded by the first appellate Court holding that sufficient cause has not been shown for condoning the delay in filing the first appeal is perverse and contrary to the law laid down by the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy**<sup>1</sup>.

(5) Per contra, learned counsel appearing for the respondent No.3, while supporting the impugned order would submit that no sufficient cause has been shown by the plaintiff for condoning the delay in filing the first appeal.

(6) I have heard learned counsel appearing for the parties and perused the records of both the courts below including judgment and decree impugned with utmost circumspection.

(7) It is well settled law 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.

(8) In the matter of **N. Balakrishnan V. M. Krishnamurthy**<sup>2</sup>, 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

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1 (1998) 7 SCC 123

2 (1998) 7 SCC 123

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 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]**.”

(9) Recently, the Supreme Court in the matter of **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and others**<sup>3</sup> 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**<sup>4</sup>. 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-

<sup>3</sup> JT 2013 (2) SC 450

<sup>4</sup> 2013 (4) B.L.J. 433

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.

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.”

(10) Reverting to the facts of the present case, it is quite vivid though the decree was bi-party decree, but counsel for the appellants/plaintiffs appearing before the trial Court for the plaintiffs did not inform about passing of the decree to the plaintiffs and when the defendants tried to take possession of the suit land on 30.10.2015, they enquired about the matter and applied for certified copy of the order on 02.11.2015 and received the same on 09.11.2015 the first appeal has been filed on 20.11.2015 with a delay of 404 days along with application for condonation of delay in filing the appeal, which, in the opinion of this Court, appears to be bonafide and cause shown is sufficient for condoning the delay in filing the appeal. Accordingly, the substantial questioning of law is answered in favour of appellants/plaintiffs.

(11) For the foregoing reasons, the impugned order dated 19.05.2017 passed by 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 subject to payment of cost of Rs. 2,000/- payable to respondents No. 2(i), 2(ii), 2(iii) & 3, 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

**D/-**



