

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 153 of 2011**

1. Bhuneshwari Bai Wd/o Buddhu Ram, aged about 61 years, Caste – Satnami, R/o Village Mudpar, P.S. and Tahsil Pamgarh, District Janjgir Champa (C.G.)
 2. Milbai D/o Buddhu Ram, aged about 40 years, Caste – Satnami, R/o Village Mudpar, P.S. and Tahsil Pamgarh, District Janjgir Champa (C.G.)
 3. Shivkumari D/o Buddhu Ram, aged about 38 years, Caste – Satnami, R/o Village Mudpar, P.S. and Tahsil Pamgarh, District Janjgir Champa (C.G.)
 4. Manmati D/o Buddhu Ram, aged about 36 years, Caste – Satnami, R/o Village Mudpar, P.S. and Tahsil Pamgarh, District Janjgir Champa (C.G.)
 5. Tulsi Bai, D/o Buddhu Ram, aged about 35 years, Caste – Satnami, R/o Village Mudpar, P.S. and Tahsil Pamgarh, District Janjgir Champa (C.G.)
 6. Savita D/o Buddhu Ram, aged about 27 years, Caste – Satnami, R/o Village Mudpar, P.S. and Tahsil Pamgarh, District Janjgir Champa (C.G.)
 7. Anita D/o Buddhu Ram, aged about 24 year, Caste – Satnami, R/o Village Mudpar, P.S. and Tahsil Pamgarh, District Janjgir Champa (C.G.)
 8. Chhoti Bai D/o Buddhu Ram, aged about 18 years, Caste – Satnami, R/o Village Mudpar, P.S. and Tahsil Pamgarh, District Janjgir Champa (C.G.)
- Appellants / Plaintiffs**

Versus

1. Gokul S/o Puri Ram, aged about 40 years, Caste – Satnami, R/o Village Jarve, Tahsil Baloda, District Janjgir Champa (C.G.)
2. Kirtan S/o Puri Ram, aged about 45 years, Caste – Satnami, R/o Village Jarve, Tahsil Baloda, District Janjgir Champa (C.G.)
3. Jeera Bai W/o Bhairo, D/o Buddhu Ram, aged about 55 years, Caste – Satnami, R/o Village Meou, Tahsil Pamgarh, District Janjgir Champa (C.G.)
4. The Tahsildar, Pamgarh, District Janjgir Champa (C.G.)

--- Respondents / Defendants

For Petitioner	:	Mr. Indra Sen Sahu, Advocate.
For Respondents No. 1 & 2	:	Mr. Y. C. Sharma, Advocate.
For Respondent No. 4	:	Mr. Avinash Singh, PL.
For Respondent No. 3	:	None, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/09/18

1. With the consent of parties, the matter is heard finally.
2. The substantial question of law involved, formulated and to be answered in the plaintiffs' second appeal is as under :-

“Whether the first appellate Court has erred in dismissing the appeal on the ground of limitation ?”

3. 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]

(3.1) The plaintiffs' suit for declaration of title and partition was dismissed by the trial Court on 08.04.2008 on merits, in which the plaintiffs were duly represented by their counsel. Being aggrieved against the judgment and decree of the trial Court, the plaintiffs preferred first appeal under Section 96 before the First Appellate Court on 20.04.2010 along with an application under Section 5 of the Limitation Act stating *inter-alia* that they are the legally illiterate person and they did not have the knowledge of passing about the decree against them and when the respondents got the plaintiffs name omitted from the revenue records on 23.10.2009 then only they came to know about the passing of the decree on the information given by the Patwari on 03.03.2010 and thereafter, they applied for the certified copy of the judgment and decree and filed an appeal on 20.04.2010, as such it

constitutes sufficient cause for condoning the delay under Section 5 of the Limitation Act.

(3.2) The defendants replied denying the averments made in the application for condonation of delay.

4. The First Appellate Court by its impugned order dated 01.12.2010 rejected the application finding no merit and consequently dismissed the first appeal against which this second appeal under Section 100 of the CPC has been filed by the appellants / plaintiffs, in which substantial question of law has been incorporated in the opening paragraph of this judgment.

5. Mr. Indra Sen Sahu, learned counsel appearing for the appellants submits that sufficient cause has been shown for delay in filing the appeal and the First Appellate Court is absolutely unjustified in rejecting the application.

6. Per contra, Mr. Y. C. Sharma would support the order impugned.

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

8. 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.

9. 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 up 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]**.”

10. Recently, the Supreme Court in the matter of **Esha Bhattacharjee V.**

Managing Committee of Raghunathpur Nafar Academy and others²

¹ (1998) 7 SCC 123

² JT 2013 (2) SC 450

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.

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

3 2013 (4) B.L.J. 433

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."

11. Keeping in view the principles of law laid down in the above stated cases, reverting to the facts of the present case, it is quite vivid that the plaintiffs are legally illiterate women and the members of the Scheduled Caste and the resident of remote village Mudpar, District Janjgir Champa and though they were duly represented by their counsel in the civil suit but according to them they did not get the information from their counsel about the dismissal of the suit. In the application it is clearly stated that as soon as their names were omitted from the revenue records at the instance of defendants it was informed to them by the Patwari that their names were omitted on 23.10.2009, which they came to know on 03.03.2010 and obtained the certified copy and filed the appeal. Though the reply has been filed denying the averments made in the application but it has not been specifically denied that they are not the legally illiterate person / women and

they deliberately avoided filing of the appeal right in time.

12. It is well settled that ignorance of law is not an excuse but there is no presumption that every person knows law. Since, the plaintiffs are legally illiterate women of the Scheduled Caste and their counsel did not inform them about their right to file an appeal, they preferred the appeal when their names were deleted from the revenue records and they came to know about the deleting their names from the Patwari. In my considered opinion this constitutes sufficient cause within the meaning of Section 5 of the Limitation Act.

13. Accordingly, the impugned order is set aside. The application under Section 5 of the Limitation Act is allowed and the delay in filing the appeal is restored to the file of District Judge, Janjgir Champa for hearing and disposal in accordance with law. Since the first appeal is filed on 20.04.2010, the First Appellate Court is directed to hear the parties and conclude it within a period of three months from the date of receipt of copy of this order and inform the registry of this Court that appeal has been heard and finally decided. No order as to cost(s). A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge