

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 729 of 2017**

Krishna Prasad Kushwah, aged about 66 years, Son of Late Narayan, R/o- Behind of Tara Engineering, Chakradhar Nagar, Raigarh, Police Station Chakradhar Nagar, Tahsil, Civil & Revenue District Raigarh (C.G.), Mobile No. -7999243356

----Appellant/Defendant No. 3

Versus

1. Champa Bai, aged about 55 years, D/o Dhan Singh, Resident of Behind of Tara Engineering, Chakradhar Nagar, Raigarh, Police Station Chakradhar Nagar, Tahsil, Civil & Revenue District Raigarh (C.G.) (Plaintiff)

Mo. No. - Not Known

2. Gopal Singh, aged about 31 years, S/o Ram Singh, R/o- Behind of Tara Engineering, Chakradhar Nagar, Raigarh, Police Station Chakradhar Nagar, Tahsi, Civil & Revenue District Raigarh (C.G.)

Mo. No.- Not Known

(DEFENDANT No. 2 GANESH BAI DIED WITHOUT LEAVING BEHIND HER LR'S)

----Respondent/Defendant No. 1

For Appellant	: Mr. Ratnesh Kumar Agrawal, Advocate
For Respondent No. 2	: Mr. Anand Kumar Gupta, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/11/2018

(1) This is defendant's No. 3 Second Appeal filed under Section 100 of CPC, which is barred by 4420 days.

(2) An application for condonation of delay in filing the appeal has been filed stating that though the decree was passed in favour of the plaintiff on 14.07.2005 but he came to know on 1.5.2017 that the suit land is a Government land and plaintiff is not entitled for recovery of the possession on the part of the suit land.

(3) I have heard learned counsel appearing for the appellant/defendant No. 3.

(4) The plaintiff's suit was decreed on 31.01.2004; defendant No. 3/appellant preferred first appeal there-against on 29.3.2004; ultimately first appeal preferred by the appellant was dismissed on 14th July, 2005 and, thereafter, instant second appeal under Section 100 of the CPC has been filed on 20.11.2017 along with application for condonation of delay of 4420 days in filing the second appeal, which states as under :-

“2. That on 01/05/2017 appellant got the knowledge that suit land bearing khasra No. 251/7 and Khasra No.251/6 is the government land, therefore, respondent No. 1/plaintiff is not entitled to recovery of the possession of the part of the suit land from appellant. There was some further delay since the appellant had to make arrangement for the funds and contact the counsel of preferring the instant appeal.

3. Thus for the reason aforesaid there has been some delay in filing the instant appeal, which is for the circumstances beyond the control of the appellant. Hence the delay is bonafide and deserved to be condoned in order to advance substantial justice in the matter.”

(5) A careful perusal of the application for condonation of delay in filing the appeal would show that no sufficient & valid reasons have been assigned for condoning the delay in filing the appeal except the fact that suit land is the government land and the plaintiff is not entitled to recovery of possession of the suit land. As the instant appeal has been filed after an inordinate delay of 4420 days, the defendant No. 3 must have pleaded sufficient & valid cause for condoning the inordinate delay in filing the appeal, which he has miserably failed, therefore, in my opinion, no case is made out to condone delay in filing the appeal. Therefore, delay occurred in filing the appeal cannot be condoned. Accordingly, IA No. 1, application for condonation of delay in filing the appeal is dismissed.

(6) Consequently, appeal is also dismissed as barred by limitation. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

