

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.764 of 2018**

1. Arjun Verma Aged About 48 Years S/o Sarju Verma

2. Bharti Verma Aged About 41 Years W/o Arjun Verma

Both Occupation Farming, R/o Village - Kusumghata, Post - Podi, Police Station And Tehsil Bodla, District Kabirdham (CG)

---- Petitioners

Versus

1. Turtman Soni S/o Late Shri Manna Lal Soni Aged About 55 Years Occupation - Farmer, Village - Gandai, Post Office - Podi, Police Station And Tehsil Bodla, District Kabirdham (CG)

2. Kumari Bai (Died) W/o Late Shri Pannalal Soni Aged About 80 Years

3. Satyabhama Soni D/o Late Pannalal Soni Aged About 50 Years

Both respondent No.2 and 3 are residence of Village - Piparriya, Police Station And Post Piparriya, Current Address Saroj Bhavan, Kudrapara-Gudiyari, Raipur, District Raipur (CG)

4. Urmila Soni D/o Late Pannalal Soni Aged About 58 Years R/o Suktapara, Mungeli, Post Office And Police Station Mungeli, District Mungeli (CG)

5. Shitala Soni D/o Late Pannalal Soni Aged About 54 Years R/o Infront Of Swarup Talkies, Durg, District Durg Chhattisgarh

6. Maya Soni D/o Late Pannalal Soni Aged About 52 Years R/o Prem Nagar Gudiyari, Raipur, District Raipur Chhattisgarh

7. Arundhati Soni D/o Late Pannalal Soni Aged About 48 Years R/o Shiv Vihar Colony, Raipur, District Raipur Chhattisgarh

8. Kasturi Soni D/o Late Pannalal Soni Aged About 56 Years R/o Professor Colony, Raipur, District Raipur Chhattisgarh

9. Savitri Soni W/o Late Ratanlal Soni Aged About 79 Years

10. Lallu Soni S/o Late Ratanlal Soni Aged About 50 Years

Both 9 and 10 are resident of Purana Kutchery Para Kawardha, Police Station And Tehsil Kawardha, District Kabirdham Chhattisgarh., District : Kawardha (Kabirdham), Chhattisgarh

11. State Of Chhattisgarh Through Collector Kawardha, District Kabirdham, Collectorate Office, Kawardha, District Kabirdham Chhattisgarh

----- Respondents

For Petitioners	:	Mr.S.C.Verma, Advocate
For Respondent No.3	:	Mr.Ashok Swarnkar, Advocate
For Respondent No.11	:	Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

24/10/2018

1. This writ petition has been filed by the petitioners under Article 227 of the Constitution of India questioning the order dated 17.7.2018 passed by the First Appellate Court by which the First Appellate Court has dismissed the plaintiffs Misc. Appeal under Order 43 Rule 1(r) of the CPC barred by limitation i.e. 16 days.
2. Mr.S.C.Verma, learned counsel for the petitioners, would submit that delay of 16 days has properly been explained by the plaintiffs, therefore, delay ought to have condoned by the Mis. Appellate Court.
3. On the other hand, Mr.Ashok Swarnkar, learned counsel for respondent No.3, would submit that the impugned order is in accordance with law.
4. I have heard learned counsel for the parties and perused the impugned order and other documents appended with writ petition.
5. The fact remains that the appeal was filed with a delay of 16 days. The reason assigned is that the plaintiffs are resident of village Kusumghata and they are legally illiterate and since the order was passed on 4.5.2017 and immediately thereafter there was civil

vacation up to 18.6.2017 and appeal was filed on 21.6.2017. The Misc. Appellate Court ought to have decided the appeal on merits.

6. The Supreme Court in the matter of Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others¹ has held that the Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression “sufficient cause”. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.
7. In view of the aforesaid reasons and following the decision of the Supreme Court in Mst. Katiji (supra), the appeal ought to have decided on merits.
8. Accordingly, the impugned order is set aside and delay in filing appeal is condoned. The matter is restored to file of the District Judge, Kawardha for hearing and disposal of the appeal on merits within a month from the date of receipt of certified copy of this order.
9. The writ petition is allowed to the extent indicated hereinabove. No cost(s). A copy of this order be sent to the District Judge, Kawardha for needful and compliance.

Sd/-
(Sanjay K.Agrawal)
Judge

B/-

¹ (1987) 2 SCC 107