

HIGH COURT OF CHHATTISGARH, BILASPUR**C.R. No. 126 of 2018**

1. Rakesh Kumar S/o Ravishankar Mishra Aged About 50 Years R/o Gandhi Chowk Baloda Bazar, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
2. Suresh Kumar S/o Ravishankar Mishra Aged About 52 Years R/o Gandhi Chowk Baloda Bazar, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh.....(Defendants)

---- Petitioners**Versus**

1. Seetaram S/o Bhagirathi Chandravanshi Aged About 83 Years R/o Village Pausari, Tahsil Baloda-Bazar, District- Bloda-Bazar Bhatapara, Chhattisgarh, Now Present, R/o Shanti Vihar Colony, Daganiya Raipur, District- Raipur, Chhattisgarh, Through Suresh Kumar, S/o Ramdayal Verma, Aged About 51 Years, R/o Village Karmada, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh., District : Raipur, Chhattisgarh
2. Smt. Brijbai Wd/o Kripashankar Chandravanshi Aged About 82 Years R/o Ramkund, Raipur, District- Raipur, Chhattisgarh, Through Suresh Kumar, S/o Ramdayal Verma, Aged About 51 Years, R/o Village Karmada, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh., District : Raipur, Chhattisgarh
3. Naresh S/o Kripashankar Chandravanshi Aged About 62 Years R/o Ramkund, Raipur, District- Raipur, Chhattisgarh, Through Suresh Kumar, S/o Ramdayal Verma, Aged About 51 Years, R/o Village Karmada, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh., District : Raipur, Chhattisgarh
4. Tulsi Ram S/o Kripashankar Chandravanshi Aged About 61 Years R/o Ramkund, Raipur, District- Raipur, Chhattisgarh, Through Suresh Kumar, S/o Ramdayal Verma, Aged About 51 Years, R/o Village Karmada, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh., District : Raipur, Chhattisgarh
5. Lokesh S/o Kripashankar Chandravanshi Aged About 58 Years R/o Ramkund, Raipur, District- Raipur, Chhattisgarh, Through Suresh Kumar, S/o Ramdayal Verma, Aged About 51 Years, R/o Village Karmada, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh., District : Raipur, Chhattisgarh
6. Onkesh Kumar S/o Kripashnkar Chandravanshi Aged About 54 Years

R/o Ramkund, Raipur, District- Raipur, Chhattisgarh, Through Suresh Kumar, S/o Ramdayal Verma, Aged About 51 Years, R/o Village Karmada, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh., District : Raipur, Chhattisgarh

7. Smt. Kamla Wd/o Shivnarayan Chandravanshi Aged About 73 Years R/o Shanti Vihar Colony, Daganiya, Raipur, District- Raipur, Chhattisgarh, Through Suresh Kumar, S/o Ramdayal Verma, Aged About 51 Years, R/o Village Karmada, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh., District : Raipur, Chhattisgarh
8. Ramnarayan S/o Bhagirathi Chandravanshi Aged About 76 Years R/o Shanti Vihar Colony, Daganiya, Raipur, District- Raipur, Chhattisgarh, Through Suresh Kumar, S/o Ramdayal Verma, Aged About 51 Years, R/o Village Karmada, Tahsil Baloda Bazar, District- Baloda Bazar- Bhatapara, Chhattisgarh., District : Raipur, Chhattisgarh
9. State Of Chhattisgarh Through Collector, Baloda Bazar, District- Baloda Bazar-Bhatapara, Chhattisgarh.....(Defendant No. 3)

---- Respondents/Plaintiffs

For Petitioners	:	Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocate.
For Respondent No.9/State:		Mr. Ashish Surana, PL.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/12/18

1. The petitioner takes exception to the order dated 14.11.2018 by which the first appellate Court while entertaining the first appeal under Section 96 of CPC granted the application under Section 5 of the Limitation Act condoning the delay of six months and 15 days in filing the appeal.
2. Mr. Manoj Paranjpe, learned counsel appearing for the petitioners vehemently submits that the first appellate Court has committed gross illegality in condoning the delay by the impugned order as sufficient cause was not shown for delay in preferring the appeal therefore, the impugned order is liable to be set aside.

3. I have heard learned counsel for the petitioners and perused the impugned order with utmost circumspection.

4. The first appellate Court while entertaining the appeal has clearly held that the age of the respondent No. 1/appellant No. 1 therein is 83 years and he was the person responsible for filing the appeal and on account of his ill health he could not prefer the appeal right in time. As such, sufficient cause was shown to the first appellate Court for condoning the delay under Section 5 of the Limitation Act.

5. The Supreme Court in the case of **N. Balakrishnan v. M. Krishnamurthy**¹ has held that sufficient cause has to be construed liberally for condoning the delay and held in para-9 as under : -

“9. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.”

6. Similarly, in a decision rendered by Supreme Court in the case of **Collector Land Acquisition Anantnag and Another v. Mst. Katiji and Others**², the meaning and scope of Section 5 of the Limitation Act has been described by their Lordships of as under :-

“9. The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matter on '*merits*'. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice – that being the life-purpose for the

1 (1998) 7 SCC 123

2 (1987) 2 SCC 107

existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected

not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

6. Reverting to the facts of the present case and following the principles of law laid down by the Supreme Court for exercise of jurisdiction by the Superior Court while considering the application for condonation of delay under Section 5 of the Limitation Act, 1963, it is quite vivid that the first appellate Court has exercised the jurisdiction strictly vested in it in accordance with law by condoning the delay in filing the appeal which is neither perverse nor contrary to law and is a sound exercise of jurisdiction which does not suffer from vice of arbitrariness or illegality.

7. Accordingly, the civil revision deserves to be and is hereby dismissed. No order as to cost(s).

8. A copy of this order be sent to the first appellate Court for information and needful.

SD/-
(Sanjay K. Agrawal)
Judge