

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 179 of 2005**

1. A. Smt.Sudhani Bai w/o Late Pukaram, age 65 years.
B. Kulan Ram S/o Late Late Pukaram, age 45 years.
C. Smt. Ramkeli D/o Late Pukaram, age 40 years.
D. Smt. Leela D/o Late Pukaram, age 35 years.
2. Rungtu S/o Govind, age 50 years, Caste-Bargah.
3. Mani Ram S/o Govind, aged about 40 years.
All R/o Village Deogarh, Tehsil Sitapur, District Surguja, C.G.

---- Appellants**Versus**

1. A. Parasnath S/o Jaganram, age 40 years, Caste- Bargah.
B. Smt. Moharpatiya D/o Jaganram, age 45 years, Caste-Bargah.
C. Smt. Rahmet D/o Jaganram, age 35 years, Caste-Bargah.
2. Mohan S/o Motka Bargah, age 35 years.
3. Fulsai S/o Motka Bargah, age 30 years.
4. Manbudhni Wd/o Motka bargah, age 55 years.
All R/o Bhanwradand, Tehsil Sitapur, District Surguja, C.G.
5. The State of M.P. (Now C.G.) through Collector, Surguja, Ambikapur, District Surguja, C.G.

---- Respondents

For Appellants:	Shri A. K. Prasad, Advocate.
For Respondents No.1 to 4:	Shri Sunil Tripathi, Advocate.
For State/Respondent No. 5:	Shri R. K Jaiswal, PL

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

15.04.2019

1. This appeal has been preferred by the Plaintiffs' against the order dated 14.02.2005 passed by the 1st Additional District Judge, Ambikapur in Civil Appeal No.5-A/2005, by which, the lower appellate Court has rejected the application for condonation of delay in preferring the appeal under

Section 96 of the Code of Civil Procedure (hereinafter referred to as the 'CPC') and consequent upon that, dismissed the appeal.

2. Briefly stated the facts of the case are that the Plaintiffs instituted a suit claiming declaration of title and injunction with regard to the property in question described in plaint Schedule-'A' situated at village Deogarh, Tehsil-Sitapur, District Surguja by submitting *inter-alia* that one Ghurwin was the owner of the suit property, who had four sons, namely, Bulchu, Teju, Marha and Kolai. After the death of Ghurwin, his four sons separated by getting their shares. The plaint Schedule-'A' property was of late Kolai while property described in plaint Schedule-'B' was of late Bulchu. The said Bulchu has also acquired some land other than the property mentioned in Schedule-'B' which he sold to Thaula, Jairam, Turi, Gathiyaram, Dhamna, Modi, Sudhu and Ratna and thereafter he settled at village Bhanwradand. The lands of Schedule 'A' and 'B' were being cultivated by the successors of late Kolai. According to further averments made in the plaint, the plaint Schedule-'A' property is the exclusive property of Plaintiffs, however, Defendants after getting the property in partition among successors of late Kolai and Bulchu started interfering in their peaceful possession. The Plaintiffs have, therefore, been constrained to file the suit in the instant nature.

3. The aforesaid suit was contested by the Defendants and after considering the evidence led by the parties, the trial Court by its judgment dated 10.05.1999 and decree drawn on 13.05.1999 has dismissed the Plaintiffs' claim.

4. Being aggrieved with the aforesaid judgment and decree, the appeal was preferred by the Plaintiffs along with an application for its

condonation of delay of 24 days as required under Section 5 of the Indian Limitation Act, 1963 (hereinafter referred to as 'the Act, 1963'). It is stated in the application that the concerned trial Court has heard the arguments of the counsels on 07.05.1999, however, no date was fixed for pronouncement of the judgment. It is pleaded further that the Appellants appeared before the concerned Court on 14.05.1999, 17.06.1999 and 21.06.1999 for knowing about the fate of their case. It is stated further that certain case laws were produced by their counsel on 07.06.1999 which were, however, returned on 26.06.1999 and then only they came to know that the judgment and decree has already been delivered on 10.05.1999. Immediately upon knowing the said fact, an application for obtaining the certified copy of the judgment and decree was made on 28.06.1999 and it was accordingly delivered on 14.07.1999. After obtaining the certified copy as such, an appeal was filed immediately thereafter on 19.07.1999. It is, therefore, submitted that the delay of 24 days' has occurred bona fide and there is no mala fide intention behind it, therefore, it deserves to be condoned in preferring the appeal.

5. While replying to the aforesaid application, it is stated by the Defendants that after hearing the arguments of the counsels, the trial Court has fixed the case on 10.05.1999 for pronouncement of its judgment and contested further on the ground that the reasons as assigned in the application for condonation of delay in filing the appeal are not sufficient and satisfactory and, therefore, liable to be rejected.

6. After considering the said application for condonation of delay in preferring the appeal under Section 96 of CPC and upon considering further the evidence of the Appellants, the lower appellate Court has

arrived at a conclusion that the counsel for the Appellants, namely, Radha Krishna Dubey has manipulated the record of the trial Court and as a consequence of it, the application made under Section 5 of the Act, 1963 has been rejected and consequent upon it, dismissed the appeal and, directed further for initiation of the proceeding against the said counsel. A separate proceeding bearing MJC No. 7/2005 titled as "State of Chattisgarh Vs. Radha Krishna Dubey" has accordingly been initiated against him.

7. Being aggrieved with the aforesaid order, the Plaintiffs have preferred this appeal and by order dated 13.06.1999, this Court while admitting the appeal, has framed the following substantial question of law:-

"Whether the first appellate Court ignored the material evidence in deciding the delay in filing the appeal?"

8. Shri A. K. Prasad, learned counsel for the Appellants submits that the Appellants were not aware regarding the delivery of the said judgment and decree and came to know about this fact only on 26.06.1999 and thereafter, an application was made for obtaining the certified copy of it on 28.06.1999. In pursuance thereof, the certified copy was delivered to them on 14.07.1999 and immediately thereafter, the appeal was preferred under Section 96 of CPC on 19.07.1999. He submits further that on account of mistake committed by their counsel as observed by the Court below, the Appellants should not be penalized. He submits further that the concerned Court below ought to have adopted a liberal view in order to provide substantial justice to the parties, particularly when the delay is of just 24 days' in preferring the appeal. In support, he placed his reliance upon the decision rendered in the matter of **N. Balkrishnan Vs. M. Krishnamurthy**

reported in **(1998) 7 SCC 123**.

9. On the other hand, Shri Sunil Tripathi, learned counsel for the Respondents while supporting the order impugned, submits that this is the case where the Appellants have approached the Court with mala fide intention as the order sheet dated 07.05.1999 shows very specifically that the case was fixed for pronouncement of the judgment on 10.05.1999. Therefore, the Court below upon examining the complete record has rightly rejected the said application for condonation of delay in filing the appeal.

10. I have heard learned Counsel for the parties and perused the entire records of the Courts below carefully.

11. Before advertng to the facts in hand, it is necessary to examine the provision prescribed under Section 5 of the Act of 1963 in order to answer the substantial question of law as framed hereinabove. The said provision is relevant for the purpose is reproduced herein as under:-

“5. Extension of prescribed period in certain cases. – Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

12. Perusal of the aforesaid provision makes it clear that the Legislature had left the term “sufficient cause” undefined and unillustrated for what is “sufficient cause” in one case may not be so in another case. Thus, the said term is kept elastic and unfettered discretion has been conferred on

the Courts to do substantial justices considering the facts and circumstances of the case. No hard and fast rule, therefore, can be laid regarding condonation of delay. The sums and substance would be that the discretion has to be exercised judicially and the approach of the Court should be liberal and pragmatic, but not pedantic.

13. Based upon the aforesaid provision, the expression "sufficient cause" has to be construed liberally in order to provide substantial justice to the parties unless and until the appeal is preferred by an ordinate delay. Here in the instant case, the Appellants have applied for obtaining the certified copy of the judgment and decree of the trial Court on 28.06.1999 immediately upon knowing the delivery of the said judgment which was delivered on 10.05.1999. In pursuance to the said application, the certified copy was delivered to them on 14.07.1999 and immediately thereafter, the appeal was preferred on 19.07.1999 along with an application for its condonation of delay of 24 days' under Section 5 of the Act, 1963. Perusal of the evidence of one of the Appellants, namely, Maniram, particularly paragraph 8 of his testimony would reveal that he was not aware regarding the delivery of the judgment and decree passed by the trial Court after conclusion of the final hearing of the counsel for the parties. The Respondents have not entered into the witness box in order to rebut the same. As such, it appears that the Appellants were not aware regarding the delivery of the said judgment and decree as passed by the trial Court.

14. Be that as it may, after considering the evidence of the Appellants and considering further the record of the trial Court, it was held by the lower appellate Court that in fact, the counsel for the Appellants, namely, Radha Krishna Dubey, has manipulated the record of the trial Court in

order to get the appeal in time. As a consequence, the Court below has rejected the application for condonation of delay in filing the appeal and consequent upon it, dismissed the appeal. What is, therefore, reflected from the record of the Court below is that it is the counsel of the Appellants, who has committed the mistake while manipulating the record of the trial Court and he alone was found responsible for the same. Pertinently to be noted here further that while refusing to condone the delay as such, the Court below has not found that the Appellants were responsible in any manner in approaching the Court with mala fide intention or have committed any mistake like their counsel. As such delay of 24 days ought to have been considered in a liberal view in order to provide substantial justice to the parties. Having failed so, the Court below has committed an illegality in refusing to condone the delay in filing the appeal preferred under Section 96 of CPC. In any case, the Appellants cannot be held liable owing to the mistake of their counsel.

15. In the matter of **N. Balkrishnan Vs. M. Krishnamurthy** reported in **(1998) 7 SCC 123**, where it has been held by the Supreme Court that sufficient cause has to be construed liberally especially when the delay is not inordinate and mala fide. Relevant paragraphs 11 and 12 of the said judgment reads 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 lifespan 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. Administrator, Howrah Municipality* [AIR 1972 SC 749].”

16. By applying the aforesaid principles to the case in hand and particularly, when the Appellants were not found negligent in approaching the Court with mala fide intention, I am inclined to condone the delay of 24 days' in filing the appeal under Section 96 of CPC. Accordingly, I answered the substantial question of law in the positive and, it is held that the Court below has committed an illegality in refusing to condone the delay in filing the appeal.

17. Consequently, the appeal is allowed and, the impugned order dated 14.02.2005 is hereby set aside. The delay in filing the appeal is accordingly condoned. The first appeal is restored to its original file before the Court of First Additional District Judge, Ambikapur for hearing and disposal of the appeal on merits in accordance with law. The parties are hereby directed to appear before the First Additional District Judge, Ambikapur and/or, the concerned Court on 21.06.2019. The concerned

appellate Court is directed to decide the appeal on merits as expeditiously as possible as the judgment and decree of the trial Court was passed way back on 10.05.1999.

18. Registry is directed to send back the entire record to the concerned appellate Court forthwith. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita