

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.55 of 2007

Raipur Development Authority, a body corporate constituted under the relevant provisions of C.G. Nagar Tatha Gram Nivesh Adhiniyam, 1973, through its Chief Executive Officer, Raipur Development Authority, R.D.A. Building, Raipur

(Defendant No.1)
---- Appellant

Versus

1. Mumtaj Begum, wife of Aslam Ali, aged about 28 years, resident of C/o Papa Main Kabristan Wale, Maudhapara, Raipur

---- Plaintiff

2. Mohammed Altaf, son of Sheikh Gaffar, resident of Maudhapara, Raipur

(Defendant No.2)
---- Respondents

For Appellant/Defendant No.1:	Mr.Pankaj Agrawal, Advocate
For Respondents No.1 & 2:	None present

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

02/08/2019

1. The substantial question of law involved, formulated and to be answered in this defendant No.1's second appeal is as under: -

“Whether the first appellate Court is justified in holding that defendant No.1 has failed to show sufficient cause and has not explained delay of 28 days in filing the appeal ?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court.)

2. Suit filed by respondent No.1/plaintiff was decreed by the trial Court holding that the plaintiff herein is entitled for compassionate appointment in defendant No.1 Department and also entitled for receiving the amount of gratuity and other service benefits, against which, the appellant herein preferred first appeal under Section 96 of

the CPC with a delay of 28 days along with an application for condonation of delay of 28 days in filing the appeal, which was dismissed by the first appellate Court and consequently, the first appeal was also dismissed holding that no sufficient cause was shown, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant No.1, in which the substantial question of law has been framed, which has been set-out in the opening paragraph of this judgment.

3. Learned counsel for the appellant / defendant No.1 submits that as advised by the appellant's counsel that there is period of 90 days in filing first appeal, delay has been occurred and for default of the counsel, party should not be penalized.
4. None appeared by the respondents though served with notice of appeal.
5. The Supreme Court in the matter of Collector. Land Acquisition, Anantnag and another v. Mst. Katiji and others¹ while construing the meaning of “sufficient cause” under Section 5 of the Limitation Act, 1963 held that the Courts should adopt a liberal and justice-oriented approach and condoned the delay in filing appeal, under Section 5 of the Limitation Act, 1963. Their Lordships of the Supreme Court further held that the High Court erred in dismissing the appeal on hyper technical ground of bar of limitation and observed as under: -

“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.”

1 (1987) 2 SCC 107

6. Similarly, in the matter of N. Balakrishnan v. M. Krishnamurthy² it has been held by the Supreme Court that “sufficient cause” has to be construed liberally especially when the delay is not deliberate and *mala fide*. Relevant portion of the report 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 v. Kuntal Kumar*³ and *State of W.B. v. Administrator, Howrah Municipality*⁴.”

7. Reverting to the facts of the present case in light of the aforesaid principle of law laid down by Their Lordships of the Supreme Court in the above-stated judgments (*supra*), it is quite vivid that delay has been occurred on account of incorrect legal advice given by the appellant's counsel that first appeal under Section 96 of the CPC has to be filed within 90 days before the District Judge, whereas first appeal has to be filed within 30 days from the date of the judgment

2 (1998) 7 SCC 123

3 AIR 1969 SC 575

4 (1972) 1 SCC 366

and decree excluding the copies days. Thus, I am of the considered opinion that sufficient cause was shown in filing the appeal with a delay of 28 days.

8. As a fallout and consequence of the aforesaid discussion, the order passed by the first appellate Court is set aside and application for condonation of delay in filing the appeal would stand allowed. The case is remitted to the first appellate Court to consider and dispose of the appeal on merits within three months from the date of receipt of a copy of this judgment.
9. The substantial question of law is answered in favour of defendant No.1 and against the plaintiff. The second appeal is allowed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

B/-