

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 500 of 2017**

1. Jagdish, S/o Late Shri Jagroo, aged about 56 years,

2. Bodel, S/o late Shri Ramjeet, Age about 28 years,

Both are resident of Village – Chungadi, Tahsil-
Bhaiyathan, District – Surajpur (C.G.)

---- Appellants/Plaintiffs.

Versus

1. Ghasi, S/o Late Shri Budhra, aged 57 years,

2. Subhas, S/o Late Shri Dasroo, aged about 32 years,

3. Dharmjeet, S/o Shri Dasroo, aged about 26 years,

Above All Resident at Village- Chungadi, Tahsil –
Bhaiyathan, District – Surjapur (C.G.)

4. Chattisgarh State Through the Collector Surjapur
(C.G.)

---- Respondents/defendants

For Appellant : Mr. S.A. Ansari, Advocate.

For Respondents No. 1 & 3 : Mr. D.N. Prajapati, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/12/2019

(1) The substantial question of law involved, formulated and to be answered in this plaintiffs' second appeal states as under:-

“Whether the First Appellate Court is justified in refusing to condone the delay in filing the First Appeal under Section 5 of the Indian Limitation Act, 1963 ?

(For the sake of convenience, parties would be referred

hereinafter as per their status shown in the suit before the trial Court).

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The plaintiff's suit for partition and possession was dismissed by the Second Civil Judge, Class -I, Surajpur by its order dated 19-01-2005 in Civil Suit No. 72-A/2013, against which the plaintiff preferred first appeal under Section 96 of CPC along with application for condonation of delay of 111 days in filing the appeal supported by affidavit, which was replied by defendants without affidavit. The application for condonation of delay in filing the appeal was dismissed finding that application for condonation of delay is supported by affidavit and it was not duly notarized and no medical certificate has been filed and, therefore, no sufficient cause has been shown for delay in filing the appeal and consequently the first appeal was also dismissed, against which, this second appeal has been preferred by the appellants/plaintiff, in which the substantial question of law has been formulated and set out in opening paragraph of the judgment.

(4) Learned counsel appearing for the appellant, would submit that the finding recorded by the first appellate Court holding that sufficient cause has not been shown for condoning the delay in filing the first appeal is perverse and contrary to the law laid down by the Supreme Court in

N. Balakrishnan v. M. Krishnamurthy¹.

(5) Per contra, learned counsel appearing for the respondents No. 1 to 3, while supporting the impugned order would submit that no sufficient cause has been shown by the plaintiffs for condoning the delay in filing the first appeal.

(6) I have heard learned counsel appearing for the parties and perused the records of both the courts below including judgment and decree impugned with utmost circumspection.

(7) The Supreme Court in **N. Balakrishnan** (supra) observed that the sufficient cause has to be construed liberally especially when the delay is not deliberate and *mala fide*. Paras 11 & 12 of the said decision are 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 life span must be fixed for each remedy. Unending

¹ (1998) 7 SCC 123

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}."

(8) Thus, applying the ratio laid down by the Supreme Court in **N. Balakrishnan** (supra) to the facts of the case at hand, it would appear that though the application was filed supported by affidavit but that affidavit was not duly authorized and it nowhere bears the signature of deponent and no medical certificate was produced, in that circumstances,

the first appellate Court ought to have given opportunity to the appellants/plaintiffs to file affidavit and medical certificate in support of the application for condonation of delay in filing the first appeal, which has not been done, and thereby the impugned order has been passed, which is contrary to law as the opportunity ought to have been granted to the appellants/plaintiff to file duly constituted affidavit and medical certificate, if any. Otherwise, limited enquiry could have been held in the said application for condonation of delay in filing the appeal.

(9) As a sequel, the instant second appeal is allowed. The impugned order dated 22.07.2017 is set aside; the matter is remitted to the first appellate Court to give opportunity to the appellants herein to file duly constituted affidavit in support of application for condonation of delay and other side also in rebuttal for filing affidavit and, thereafter, application for condonation of delay in filing the first appeal will be decided afresh in accordance with law expeditiously preferably within a period of three months from the date of receipt of certified copy of this order.

(10) Registry is directed to return back the record to the first appellate Court forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

