

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 232 of 2007**

Brijlal @ Jugelal (since deceased) through LRs:-

1(a) Smt. Dhan Bai, W/o Jugelal Satnami, aged about 46 years, R/o village Baroda, Mandir Hasaud, Tahsil & District – Raipur (C.G.)

1(b) Smt. Punni Bai, W/o Budharu Ram Banjare, aged about 42 years, R/o village Gorbhatti, P.S. Arang, District Mahasamund (C.G.)

1(c) Smt. Santoshi Bai, W/o Kamalnarayan Jangde, aged about 32 years, R/o Mandir Hasaud, District Raipur (C.G.)

1(d) Smt. Anusuiya, W/o Dewadas, aged about 29 years, R/o Village Konkera, P.S. Rajim, District Raipur (C.G.)

1(e) Balwaram, S/o late Brijlal, aged about 34 years, R/o village Baroda, Mandir Hasaud, Tahsil-Arang, District Raipur (C.G.)

----- Appellant/Plaintiffs.

Versus

1. Anakram, S/o Shri Vishal Satnami, aged about 30 years, R/o Chotelal Nagar, Behind Jaisan Rice Mill; Police Station Ganj, Raipur (C.G.)

2. Koriyan Finance Private Limited, Through – Director Madan Lal Sancheti; S/o Shri Lunkaran Sancheti, R/o Tatyapara, Near Kankali Hospital, Raipur (C.G.)

3. State of C.G. through – Collector, Distt. Raipur (C.G.)

----- Respondents/defendants

For Appellant	:	Ms. Pragya Pandey, Advocate.
For Respondents No. 1 & 2	:	Mr. B.P. Sharma & Ms. Anmol Sharma, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/11/2019

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

“Whether the First Appellate Court was justified in dismissing the first appeal by holding that no sufficient cause has been shown for delay in filing the appeal, by recording a finding which is perverse and contrary to the record ?

(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 declaring the registered sale deeds dated 24.01.1989 & 30.11.1989 as null and void was dismissed by the trial Court by its order dated 28-10-2005 in Civil Suit No. 309-A/2002, against which the plaintiff preferred first appeal under Section 96 of CPC along with application for condonation of delay of 45 days in filing the appeal stating inter alia that the plaintiff was suffering from jaundice, therefore, he could not preferred appeal right in time and that constitute sufficient cause for condoning the delay of 45 days in filing the first appeal.

(2.2) In support of application for condonation of delay in filing the first appeal, the plaintiff has examined Dr. K.S. Rai (AW-1), who has stated in his evidence that as the

plaintiff was suffering from jaundice at the relevant point of time.

(3) The First Appellate Court did not find favour with the application for condonation of delay and finding no sufficient cause for delay in filing the appeal, dismissed the application for condonation of delay and consequently appeal was also dismissed. Against which, this second appeal has been preferred by the appellant/plaintiff in which the substantial question of law formulated for consideration and which has been incorporated in the opening paragraph of the judgment.

(4) Learned Senior 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. Krishnamurthy**¹.

(5) Per contra, learned counsel appearing for the respondents No. 1 & 2, while supporting the impugned order would submit that no sufficient cause has been shown by the plaintiff 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.

¹ (1998) 7 SCC 123

(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 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 plaintiff was suffering from jaundice, therefore, he could not prefer first appeal right in time and that constitute sufficient cause for delay in filing the appeal, even otherwise, the plaintiff would not get any benefit by not filing appeal right in time as his suit was already dismissed by the trial Court. In the considered opinion of this Court, sufficient cause was shown by the plaintiff before the first appellate Court for condoning the delay in filing the appeal.

(9) As a sequel, the instant second appeal is allowed. The impugned order dated 08.12.2006 is set aside; delay in filing the first appeal is condoned; and restored the appeal bearing civil appeal No. 1-A/2006 to its original file of the Court of 9th Additional District Judge, Raipur, for hearing and

disposal in accordance with law on its own merits, as expeditiously as possible, preferably within a period of three months from the date of receipt of record and certified copy of this order. No cost(S).

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

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

