

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 256 of 2019**

Chaitram, S/o Late Jagrakhan, aged about 48 years, R/o Village –  
Parpodi, Tahsil – Saja, District – Bemetara (C.G.)

**---- Appellant/Defendant No. 1**

**Versus**

1. Tirithram, S/o Late Shri Jagrakhan, aged about 60 years, R/o Village – Parpodi, Tahsil – Saja, District – Bemetara (C.G.)
2. Tejram, S/o Late Shri Jagrakhan, aged about 56 years, R/o Village – Parpodi, Tahsil -Saja, District – Bemetara (C.G.)
3. Nema Bai, D/o Late Shri Jagrakhan, aged about 48 years, R/o Village – Parpodi, Tahsil – Saja, District Bemetara (C.G.)
4. Smt. Bundabai, Wd/o Late Shri Jagrakhan, aged about 80 years, R/o Village – Parpodi, Tahsil – Saja, District – Bemetara (C.G.)
5. State of Chhattisgarh, Through – Collector, Bemetara, District – Bemetara (C.G.) ..... Defendant No. 2

**---- Respondents**

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| For Appellant              | : | Mr. Vaibhav A. Goverdhan, Advocate.        |
| For Respondents No. 1 to 4 | : | Mr. Ajit Singh, Advocate.                  |
| For Respondent No. 5       | : | Mr. Ravi Kumar Bhagat, Dy. Govt. Advocate. |

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**Hon'ble Shri Justice Sanjay K. Agrawal****Order On Board**

**24/07/2019**

(1) The substantial question of law involved, formulated and to be answered in this defendants No. 1's second appeal states as under:

“Whether the Lower Appellate Court has committed an illegality in rejecting the application filed under Section 5 of the Indian Limitation Act, 1963 for condonation of delay 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) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The suit instituted by the plaintiffs No. 1 to 4, respondents No. 1 to 4 herein, for partition and possession was decreed on 29.06.2018, in which, defendant No. 1 applied for certified copy of the order, on 4.7.2018 and received the same on 06.07.2018 and first appeal was filed on 13.10.2018 along with application for condonation of delay in filing the appeal stating inter alia that the defendant No. 1 was arranging funds for filing appeal and also on account of ill-health, he could not contact his counsel right in time and as soon as he contacted the counsel and came to know about the status of the civil suit that the plaintiffs' suit has been decreed, he filed first appeal under Section 96 of the Code of Civil Procedure (henceforth "CPC").

(3) The First Appellate Court did not found 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, the appeal was also dismissed, against which, this second appeal has been preferred by the appellant/defendant No.1 in which the substantial question of law has been formulated and set out in the opening paragraph of the judgment.

(4) Learned counsel appearing for the appellant/defendant No. 1, 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**<sup>1</sup>.

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1 (1998) 7 SCC 123

(5) Per contra, learned counsel appearing for respondents No. 1 to 4, while supporting the impugned order would submit that no sufficient cause has been shown by defendant No. 1 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 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 it is a case where decree for partition has been granted in favour of the plaintiffs, against which defendant No. 1 preferred first appeal with a delay of 75 days stating that he was arranging funds for filing appeal and on account of ill-health, he could not contact with his counsel right in time and when he came to know about the status of the suit, he obtained certified copy of the order and filed first appeal along with application for condonation of delay in filing the appeal. In the considered opinion of this Court, sufficient cause was shown by defendant No. 1 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 26.02.2019 is set aside; delay in filing the first appeal is condoned; and restored the appeal bearing civil appeal No. unregistered/2018 is hereby restored to its original file of the Court of District Judge, Bemetara for hearing and disposal in accordance with law on its own merits, as expeditiously as possible, preferably within a period of six months from the date of receipt of record and certified copy of this order.

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

Sd/-

(Sanjay K. Agrawal)  
Judge

**D/-**

