

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.364 of 2011**

Ishwar Lal Patanwar, aged about 58 years, S/o Kala Nath Patanwar,
Caste Kurmi, R/o Uslapur, Tahsil Masturi, District-Bilaspur (CG)

----- Appellants/Plaintiff

Versus

1A. Shekhar Chandrakar S/o Late Abhimanyu

1B. Anil Chandrakar, S/o Late Abhimanyu

1C. Karunesh S/o Late Abhimanyu

1D Banty S/o Late Abhimanyu

1E Bhavishya S/o Late Abhimanyu

1F Guddu S/o Late Abhimanyu

1G Indira D/o Late Abhimanyu

1H Baby D/o Late Abhimanyu

1I Pradeep S/o Late Abhimanyu

1J Dhirendra S/o Late Abhimanyu

Respondents No.1A to 1J are the resident of Jain Mohall, Near High School, Akaltara, Tahsil – Janjgir, District Janjgir-Champa (CG)

1K Rajesh Chandrakar, aged about 52 years S/o Late Abhimanyu Chandrakar, R/o Village Darrabhanda, Police Station – Seepat Tahsil – Masturi, District – Bilaspur (CG)

1L Smt.Veena Chandrakar, aged about 44 years, D/o Late Abhimanyu Chandrakar W/o Shri Mohan Chandrakar, R/o Near Ratan Hotel, Link Road, Bilaspur, Police Station – Civil Lines, Tahsil – Bilaspur Revenue and Civil District – Bilaspur (CG)

2. Sanju, S/o Maksudan, Caste Kurmi, R/o Darri Bhata, Tahsil Masturi, District Bilaspur (CG)

3. State of Chhattisgarh through the Collector, Bilaspur, District Bilaspur (CG)

----- Respondents

For Appellant/Plaintiff	: Mr.Avinash K. Mishra, Advocate
For Respondents No.1 and 2	: Mr.Ratnesh Kr. Agrawal, Advocate
For Respondent No.3	: Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

25/07/2019

1. The substantial question of law involved, formulated and to be answered by this Court in this plaintiff's second appeal is as under:-

“Whether the learned first appellate Court erred in dismissing the appeal on the point of delay in filing the first appeal or the first appeal of the appellant ought to be decided on merit ?”

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

2. The plaintiff's suit for declaration of title and permanent injunction was dismissed by the trial Court on 28.1.2010, to which he applied for certified copy on 5.2.2010 and certified copy was received by him on 19.2.2010, but appeal was preferred by the appellant/plaintiff before the first appellate Court on 14.2.2011 along with application for condonation of delay stating that he is Headmaster in the school and file went missing in the school which he received back on 9.2.2011 (incorrectly stated in the application and affidavit as 9.2.2010) and filed the appeal on 14.2.2011, therefore, delay of 336 days in filing the appeal be condoned, which the first appellate Court did not find favour with and rejected the same and consequently, appeal was dismissed, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

4. Mr.Avinash K. Mishra, learned counsel for the appellant/plaintiff, would submit that it is bonafide mistake as file went missing in the school of the appellant herein along with school bag of one student and when he received back on 9.2.2011, then he preferred appeal after taking necessary steps, therefore, the delay being bonafide deserves to be condoned and appeal be restored for hearing and disposal in accordance with law.

5. Mr.Ratnesh Kumar Agrawal, learned counsel for respondents No.1 and 2 would oppose the submission and submit that the appellant being an educated person, the theory as projected for condoning the delay in filing appeal is unacceptable and insufficient cause. The delay is deliberate and therefore, he is not entitled for indulgence and appeal deserves to be dismissed.

6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.

7. The Supreme Court in the matter of **Collector. Land Acquisition, Anantnag and another v. Mst. Katiji and others**¹ 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 of four days 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

¹(1987) 2 SCC 107

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.”

8. 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

²(1998) 7 SCC 123

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.”

9. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that the plaintiff's suit for declaration of title has been dismissed on merits on 28.1.2010, which he applied for certified copy on 5.2.2010 and certified copy was received by him on 9.2.2010, but appeal was preferred by him on 14.2.2011 with a delay of 336 days. The application of the plaintiff was supported by an affidavit, which has not been controverted by the defendants before the first appellate Court by filing counter-affidavit. The plaintiff is teacher and his explanation that file went missing with school bag of the student, which the first appellate Court has not accepted, by which the plaintiff has suffered the decree though there is delay in filing the appeal, but in view of uncontroverted evidence available on record as the defendants did not controvert by filing counter-affidavit to application for condonation of delay, it cannot be held that there is no sufficient cause for condoning the delay in filing the appeal. I am of the considered opinion, sufficient cause was shown for delay in filing the appeal, therefore, the appeal has to be decided on merits as held by Their Lordships of the Supreme Court in **Collector. Land Acquisition, Anantnag** (supra).

³AIR 1969 SC 575
⁴(1972) 1 SCC 366

10. Accordingly, the impugned order passed by the first appellate Court deserves to be and is hereby set aside. Delay in filing the appeal would stand allowed. The matter is remitted to the first appellate Court for hearing and disposal in accordance with law on its own merit. The first appellate Court is directed to conclude the hearing of appeal within three months from the date of receipts of records. Records be sent back forthwith.

11. The second appeal is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-