

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 533 of 2005**

Vijay Kumar Kurm, aged about 49 years, son of Late Babulal Kurm, resident of House No. 219, Kamrade Sudhir Mukherjee, Ward No. 50, Dhobipara, Purani Basti, Raipur, presently residing in the house of Babulal Devangan, Lakhe Nagar, Raipur. [Plaintiff]

---- Appellant**Versus**

Shankar Lal Kurm, aged about 45 years, son of Late Babulal Kurn, resident of House No. 216, Kamrade Sudhir Mukherjee, Ward No. 50, Dhobipara, Purani Basti, Raipur (C.G.)

---- Respondent/defendant

For Appellant	:	Ms.Anuja Sharma, Advocate
For Respondent	:	None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/07/2019**

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

“Whether the lower appellate Court was not justified in dismissing the application filed under Order 5 of the Limitation Act and in consequence thereof dismissing the entire appeal of the appellant ?

(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 ejectment and arrears of rent was dismissed by the trial Court on 10.5.2005, in which, the plaintiff applied for certified copy of the order on 18.7.2005, which was delivered to him on 22.08.2005 and the first appeal has been filed

on 24.08.2005 along with application for condonation of delay of 75 days in filing the appeal stating inter alia that the delay occurred in filing the first appeal is bonafide and unintentional as from 16.05.2005 to 13.06.2005, the civil court was closed on account of summer vacation and his counsel Shri M.R. Sahu, Advocate was not available in the summer vacation. When the plaintiff again contacted his counsel, then counsel has informed him about dismissal of the suit and then he obtained certified copy of the judgment & order of the trial Court and filed first appeal under Section 96 of the Code of Civil Procedure (henceforth "CPC") before the first appellate Court.

(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 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 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) None for respondent, through served.

(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 the delay occurred in filing the appeal cannot be said to be deliberate or intentional as counsel took time for obtaining certified copy of the order of the trial Court and did not inform the plaintiff about the dismissal of the suit and the counsel was not available during summer vacation, for which the appellant cannot be penalized. 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 19.09.2005 is set aside; delay in filing the first appeal is condoned; and unregistered appeal is restored to its original file of the Court of 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, as the first appeal was filed by the plaintiff on 24.08.2005.

(10) Registry is directed to return back the records to the first appellate Court forthwith. No costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

