

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 512 of 2005**

Laxman Prasad Sahu, S/o Kunji Lal Sahu, aged 25 years, R/o House No. 131 in village Urla, Tah. Abhanpur, District – Raipur (C.G.)

---- Appellant/Plaintiff No. 1.

Versus

1. Parwati Bai, Daughter of Shri Surendra Singh Thakur, Aged about 35 years, Resident of village Abhanpur, in front of Railway Station, Ambhanpur, Abhanpur, Distt. - Raipur (C.G.) (Defendant)

2. Kunji Lal Sahu, S/o Ram Singh Sahu, aged about 57 years, Govt. employee, R/o House No. 131 in village Urla, Abhanpur, Distt. Raipur (plaintiff No. 2)

---- Respondents

For Appellant	:	Mr. Viprasen Agrawal, Advocate.
For Respondent No. 1	:	Mr. Rishi Mahobia, Advocate.
For Respondent No. 2	:	Mr. H.B. Agrawal, Senior Advocate with Smt. Prabha Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/02/2019

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

“Whether the learned lower appellate Court was justified in dismissing the application for condonation of delay in filing the appeal without affording an opportunity to adduce evidence to 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 imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The plaintiff's suit for declaration of title and permanent injunction was dismissed by the trial Court. The plaintiff preferred first appeal under Section 96(1) of the Code of Civil Procedure (for short "CPC") there-against along with application for condonation of delay in filing the first appeal as the appeal is barred by 74 days.

(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/plaintiff 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**¹.

(5) Per contra, learned counsel appearing for the respondent No.3, 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.

(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

¹ (1998) 7 SCC 123

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 is quite apparent that as the judgment & decree was passed by the trial Court on 29.11.2004 but counsel for the plaintiff No.1 did not inform about passing of the decree to the plaintiff No. 1 and, therefore, he could not prefer appeal right in time. The first appellate Court has rejected the application for condonation of delay in filing the appeal on the ground that no affidavit has been filed by the counsel for the appellant, who has not informed the plaintiff about passing of the decree right in time. In the considered opinion of this Court, application for condonation of delay was duly supported by affidavit and it was not controverted by other side by filing reply with affidavit though the delay, thus, the delay occurred in filing the first appeal is neither deliberate nor intentional and the delay in filing the first appeal deserves to be condoned.

(9) As a sequel, the instant second appeal is allowed. The impugned order dated 24.08.2005 is set aside; delay in filing the first appeal is condoned and the matter is remitted to the first appellate court to consider and dispose of the appeal on merits within three months from the date of receipt of a copy of this judgment as the first appeal was preferred on 21.07.2005.

(10) Parties are directed to appear before the first appellate Court on 26th March, 2019.

(11) Records of court below be sent back forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

