

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 182 of 2005**

Ganesh Ram Sahu, S/o. Late Shri Viraj Sahu, aged about 44 years,
Agriculturist, resident of Village Saragaon, Tahsil and District Raipur (C.G.)

---- Appellant/plaintiff

Versus

1. Kodu Dheemar (since deceased) through LRs:-
 - 1.A Narendra Kumar Dheemar, aged 38 years, S/o. Kodu Dheemar
 - 1.B Rajendra, aged 42 years, S/o. Kodu Dheemar
 - 1.C Mahendra Kumar, aged 35 years, S/o. Kodu Dheemar.
 - 1.D Smt. Sukhiya, W/o. Manglu, aged 51 years, D/o. Kodu Dheemar, All R/o. Saragaon, Tah & Dist – Raipur (C.G.)
 2. Sukchand Dheemer, S/o. Kodu Dheemer, aged about 49 years,
 3. Roopchand Dheemer, S/o. Kodu Dheemar, aged about 43 years,
- All residents of Village Saragaon, Tahsil and District Raipur (C.G.)

---- Respondents

For Appellant/plaintiff	:	Mr. P.K.C. Tiwari, Senior Advocate assisted by Shri Ashutosh Trivedi, Advocate
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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/07/2019

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

“Whether the first appellate Court has committed an illegality by rejecting the appellant's application under Section 5 of the Limitation Act for condonation of delay in

filing the first 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 appellant/plaintiff's suit was dismissed on 6.8.2002 on merits. He applied for certified copy of the judgment & decree of the trial Court on 8.8.2002, which was received by the plaintiff's counsel on 1.10.2002. Thereafter, he preferred first appeal under Section 96 of the Code of Civil Procedure (henceforth "CPC") on 28.11.2002 along with application for condonation of delay of 29 days in filing the appeal.

(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 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 record as the sufficient cause was shown in not filing the appeal in right in time.

(5) None for respondents though 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.

(7) The Supreme Court in the matter of **N. Balakrishnan v. M. Krishnamurthy**¹ 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”

1 (1998) 7 SCC 123

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) Reverting to the facts of the case, it is quite vivid that the appellant/plaintiff has shown sufficient cause for the delay of 29 days in filing the appeal as he has clearly filed affidavit of Dr. G.M. Khan stating that the plaintiff was unwell and advised him to take rest and the said affidavit has not been controverted by the other side, as such, 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 19.01.2005 is set aside; delay in filing the first appeal is condoned; and restored the appeal bearing civil appeal No. 10-A/2002 to its original file of the Court of 13th Additional District Judge (FTC), 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.

(10) Registry is directed to send back the record to the first appellate Court forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

