

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.315 of 2005

Chandra Shekhar Son of Dhani Rao Bawankar, aged about 36 years,
R/o. Laxmi Nagar, in front of Prakash Swimming Pool, Ring Road
No.1, Raipur, Tah. & District Raipur (CG)

(Plaintiff)
---- Appellant

Versus

1. Rajendra Agrawal, son of Bharat Lal Agrawal, R/o. Purani Basti,
Raipur, Tah. & Distt. Raipur (CG)
2. Babu Bhai son of not known, Through-Bombay food wear, Malviya
Road, Raipur, Tah. & District Raipur (CG)

(Defendants)
---- Respondents

For Appellant:	Ms Sareena Khan, Advocate
For Respondents:	Mr.Vinod Deshmukh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

06/02/2019

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

“Whether the first appellate Court was justified in dismissing the appeal by rejecting an application for condonation of delay holding that no sufficient cause has been shown and thereby dismissed the appeal?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court.)

2. The plaintiff's suit was dismissed by the trial Court by the judgment and decree dated 17.12.2002 against which he preferred appeal before the first appellate Court under Section 96 of the CPC along with application for condonation of delay. The first appellate Court dismissed the application under Section 5 of the Limitation Act and consequently, dismissed the appeal, against which this second appeal

has been preferred in which the substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

3. Learned counsel for the appellant/plaintiff submits that sufficient cause has been shown for delay of 65 days in filing the appeal, which ought to have been construed liberally by the first appellate Court.
4. On the other hand, learned counsel for respondents/defendants supports the impugned order and opposes the second appeal.
5. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.
6. The Supreme Court in the matter of Collector. Land Acquisition, Anantnag and another v. Mst. Katiji and others¹ 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 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.”

7. 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

1 (1987) 2 SCC 107

2 (1998) 7 SCC 123

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 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.”

8. Reverting to the facts of the present case in light of the aforesaid principle of law laid down by Their Lordships of the Supreme Court, it appears that the plaintiff filed an application under Section 5 of the Limitation Act supported by affidavit that he remained hospitalized on 20.2.2003 to 20.3.2003, therefore, he could not prefer appeal well in time, as such, delay be condoned. No affidavit was filed by other side controverting the affidavit filed by the plaintiff in support of application for condonation of delay except self-serving statement opposing the application. The first appellate Court by its cryptic order without considering sufficiency of cause rejected the application.

3 AIR 1969 SC 575

4 (1972) 1 SCC 366

9. A careful perusal of the application under Section 5 of the Limitation Act would show that the sole appellant remained hospitalized for one month and therefore, he could not prefer appeal right in time. Even otherwise, cause shown is sufficient, therefore, it ought to have been condoned by the first appellate Court.
10. As a fallout and consequence of the aforesaid discussion, the order passed by the first appellate Court is set aside and the case 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 21.3.2003.
11. The substantial question of law is answered against the defendant and in favour of the plaintiff. The second appeal is allowed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-