

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 437 of 2005**

1. Dashrath, aged about 33 years, S/o Maan Singh Gond
2. Gokul, aged about 30 years, S/o. Maan Singh Gond.
3. Jai Singh, aged about 35 years, S/o. Chamru Gond.

All R/o Village – Murdongri, Tahsil & Distt. Kanker (C.G.)

---- Appellants

Versus

1. Maanuram, aged about 55 years, S/o. Kanwal Singh Gond, R/o. Village Murdongri, Tahsil & District – Kanker, (C.G.)
2. State of Chhattisgarh, through Collector, District – North Bastar, Kanker (C.G.)

---- Respondents

For Appellant	:	Mr. R.N. Jha, Advocate
For Respondent No.2/State	:	Mr. Akash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

01/07/2019

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

“Whether the First Appellate Court was justified in dismissing the first appeal as barred by limitation by recording findings, which are perverse and contrary to the record ?

(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 No. 1 – Manuram instituted a suit for permanent injunction, in which present defendants appeared before the trial Court and they appeared before the trial Court till 18.12.2001 and on that day they were absent and, therefore, they are proceed *ex parte* and ultimately on 06.08.2002, *ex parte* decree was passed against them, which they challenged before the first appellate Court by filing first appeal under Section 96 of the Code of Civil Procedure along with application for condonation of delay. They assigned the reasons for delay in filing the appeal that they were not aware about passing of the *ex parte* decree as the counsel, engaged by them, did not inform them about the passing of the *ex parte* decree, therefore, they could not prefer appeal right in time and they came to know about the passing of the *ex parte* decree on 2.4.2004 and, thereafter, they obtained certified copy of the same and filed first appeal under Section 96 of the Code of Civil Procedure (henceforth “CPC”).

(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 appellants/defendants 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 law laid

down by the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy**¹.

(5) None for respondent No. 1, 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 **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.

1 (1998) 7 SCC 123

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) Reverting to the facts of the case, it is quite vivid that appellants/defendants proceeded *ex parte* on 18.12.2001 and prior to that, counsel duly appointed was appeared and he did not appear from 18.12.2001 onwards and consequently, the *ex parte* decree was passed on 6.8.2002, admittedly of which defendants are not aware and consequently they could not prefer appeal right in time though decree was passed against them. In the instant case, the defendants have suffered decree and there was no reason not to file appeal right in time, if they were aware about the passing of the *ex parte* decree against them. In the considered opinion of this Court, sufficient cause was shown by the defendants before the first appellate Court for condoning the delay in filing the appeal from 6.8.2002 to 31.3.2004.

(9) As a sequel, the instant second appeal is allowed. The impugned order dated 6.7.2005 is set aside; delay in filing the first appeal is condoned; and restored the appeal bearing civil appeal No. 12-A/2004 to its original file of the Court of Fourth Additional District Judge (FTC), Kanker, 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 16.04.2004.

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

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

