

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 750 of 2019

Rashmi Verma

Applicant

Versus

Deepak Verma & Others

Respondents

Post for pronouncement of the Order on 19.12.2019

**Sd/-
JUDGE**

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on : 30.09.2019

Order delivered on : 19.12.2019

CRR No. 750 of 2019

- Rashmi Verma W/o Deepak Verma Aged About 32 Years R/o C/o Father Krishna Kumar Dhurandhar, Qtr. No. 19/11, Vasundhara Nagar Dakshin, Police Station Purani Bhilai - 3, Tahsil And District Durg Chhattisgarh

---- Applicant

Versus

1. Deepak Verma And Others S/o Da. Prasad Verma @ D.P. Verma, Aged About 35 Years Office At Cell Bhilai Steel Plant Bhilai, Employer No. 9947, Occupation Manager. R/o Subhash Ward Balodabazar, District Baloda Bazar - Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
2. Da. Prasad Verma @ D.P. Verma, Aged About 62 Years, R/o Subhash Ward Balodabazar, District Baloda Bazar - Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
3. Smt. Koushilya Bai W/o Da. Prasad Verma @ D.P. Verma Aged About 58 Years R/o Subhash Ward Balodabazar, District Baloda Bazar - Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondents

For Applicant : Shri Jitendra Gupta, Advocate
For Respondents : Shri B.M.Rao, Advocate

Hon'ble Smt. Justice Rajani Dubey

C A V Order

19/12/2019

Present revision has been filed against the judgment and order dated 05.04.2019 passed by the Fourth Additional Sessions

Judge, 18.06.2018

Durg in appeal Case No. 83/2019 whereby the learned court below dismissed the appeal preferred by the applicant on the ground of limitation at the motion stage.

2. Brief facts of the case are that the applicant filed application under Section 19(8) of the Protection of Women from Domestic Violence Act before the learned Judicial Magistrate First Class which was dismissed by order dated 04.02.19. Thereafter, she preferred appeal before the Sessions Court but the learned Sessions court by impugned order dated 05.04.2019, dismissed the application under Section 5 of the Limitation Act as well as appeal on the ground that it was time barred. Hence, the present revision.

3. Counsel for the applicant submits that the impugned order is perverse, illegal and contrary to law. The appellate court failed to consider the submission made by the applicant and therefore, the appeal was not filed within time however, application was filed under Section 5 of the Limitation Act whereby applicant was prevented by not having got the reservation from the railways to travel from Kharagpur because at that time, it was Holi festival and she could not get reservation therefore the appeal could not be preferred in time and also for the reason that the applicant is pursuing her studies at National Institute of Technology, Kharagpur and thus, the reason mentioned in the application for condonation of delay in filing the appeal was just and proper but the appellate court did not consider the submission made by the applicant. The delay was not deliberate and intentional and it was properly explained with proper reason

therefore, the impugned order is liable to be set aside. Reliance has been placed in the matter of **K.M.Revanasideshwara Vs.K.M.Shylaja** reported in **2012 Cr.L.J. 2142**.

4. On the other hand, counsel for the respondent supported the impugned order.

5. Heard counsel for the parties and perused the material available on record.

6. The trial court on 04.02.2019 dismissed the application of the applicant filed under Section 19(8) of the Domestic Violence Act. Against this order the applicant filed appeal which is supported by application under Section 5 of the Limitation Act but the learned appellate court below dismissed the application under Section 5 of the Limitation Act as well as dismissed the appeal as being barred by limitation. In **Arun Ganguli Vs. Amaresh Ganguli (Supra)**, Hon'ble High Court has been pleased to hold:

“23. The Supreme Court in [Vedabai alias Vijayanatabai Baburao Patil v. Shantaram Baburao Patil & Ors.](#), (2001) 9 SCC 106 observed that where the delay is of a few days, the court should adopt a liberal approach. The Courts while exercising discretion under [section 5](#) of the Limitation Act should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of few days. Where the delay is inordinate, the consideration of prejudice to the opposite party will be a relevant factor calling for a more cautious approach, but in the latter case where the delay is of few days, no such consideration may arise, and such a case deserves a liberal approach. The Supreme Court observed that the exercise of discretion on the facts of each case, keeping mind that in construing the expression "sufficient CR No:51/2017 Page 26

of 28 D.O.J. 21.01.2019 Natwar Lal Verma Vs. Anu Verma CA No: 51/2017 cause", the principle of advancing substantial justice is the prime importance."

Further, Hon'ble High Court of Delhi was pleased to refer to the decision in [Collector, Land Acquisition, Anantnag v. Katiji](#), AIR 1987 SC 1353 and was pleased to observe :

"18. In Katiji (supra), the Supreme Court observed that the legislature had conferred the power to condone delay by enacting [section 5](#) of the Limitation Act in order to CR No:51/2017 Page 23 of 28 D.O.J. 21.01.2019 Natwar Lal Verma Vs. Anu Verma CA No: 51/2017 enable the courts to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose of the existence of the institution of courts. The Supreme Court observed that:

54. Accordingly, the appeal is allowed and the impugned judgment dated 25.07.2016 is set aside and it is directed that the Ld. Trial Court shall dispose of the complaint case bearing no. 4994585/2016 (Old CC no. 21/1/16), titled as Smt. Anu Verma & Anr. vs. Natwar Lal Verma & Anr. under CR No:51/2017 Page 27 of 28 D.O.J. 21.01.2019 Natwar Lal Verma Vs. Anu Verma CA No: 51/2017 Sections [12](#), [18](#), [19](#), [20](#) and [22](#) of the Protection of Women from [Domestic Violence Act](#), 2005 filed by the complainant afresh in accordance with law. Parties are directed to appear before Ld. Trial Court on 28.01.2019."

7. Thus, in the totality of the circumstances and in the substantial interest of justice, application dated 05.04.2019 under Section 5 of the Limitation Act is allowed and the delay in filing the appeal is condoned. There is no presumption that delay is occasioned deliberately, or on account of any negligence, or on account of mala fide intent. A litigant does not stand to benefit by resorting to delay. In

fact he runs a serious risk. Since, a reading of the provisions contained in the Domestic Violence Act, does not bar the application of the Provisions of the Limitation Act in respect of the appeal, the view taken by the Court below cannot be sustained in law.

8. For all the aforementioned reasons, the present revision is allowed. The impugned order passed by the appellate court is set aside and the case is remitted back to the appellate court for fresh adjudication of the appeal on merits. The Appellate court is directed to decide the appeal on its own merits after giving opportunity of hearing to the applicant as early as possible preferably within a period of three months from the date of receipt of copy of this order. Applicant is directed to appear before the trial court on 20th January 2020.

Sd/-
(Rajani Dubey)
Judge