

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 3-12-2019****Pronounced on 9-12-2019****FA No. 356 of 2019**

Suleman Mohammad S/o Diwan Mohammad Aged About 45 Years
R/o Turkapara, Raigarh, Tahsil And District- Raigarh, CG

---- Appellant**Versus**

1. Mohammad Nazim Khan S/o Najar Mohammad Aged About 32 Years R/o Turkapara, Raigarh, Tahsil And District- Raigarh, Chhattisgarh
2. State of Chhattisgarh Through Collector, Raigarh, District- Raigarh, CG

---- Respondents

For appellant : Mr. Shubhank Tiwari, Adv. on behalf of Mr. Manoj Paranjpe, Adv.

For Respondent No. 1 : Mr. Manoj Sinha, Adv.
For Respondent No. 2. : Mr. Suyash Dhar, PL.

Hon'ble Mr. Sharad Kumar Gupta, Judge**C.A.V. ORDER**

1. By this order I.A. No. 1/2019 application for condonation of delay in filing the appeal is being disposed of.
2. Respondent No. 1 had filed a civil suit against the appellant for declaration, possession and permanent injunction of the disputed land.
3. Second Addl. District Judge, Raigarh passed the judgment and decree in Civil Suit No. A-47/2015, on 15-2-2019 whereby and whereunder he declared that respondent No. 1 is the title holder of the disputed land and within a month appellant shall hand over the possession of disputed land to respondent No. 1. Permanent injunction was also granted in favour of the respondent No. 1.
4. Being aggrieved appellant has preferred instant first appeal.
5. In brief the appellant case regarding I.A. No.1/2019 is that copy of the judgment and decree was obtained by him on 23-2-2019. Due to

summer vacation his counsel was out of station. Thereafter in the first week of June, he approached to the local counsel and as per his advice he preferred appeal due to financial crunch and old age he could not approach to the counsel at Bilaspur within time. In 2nd week of July he approached to the counsel at Bilaspur and thereafter he preferred this appeal.

6. In brief the respondent case regarding I.A. No. 1 is that he has preferred the execution on 26-3-2019, after issuance of notice, appellant preferred this appeal. There is no ground available to the appellant for condonation of delay in filing the appeal.

7. Counsel for the appellant placed reliance on the decision of Hon'ble Supreme Court in the matter of **Shakuntala Devi Jain v. Kuntal Kumari**, (AIR 1969 SC 575), para 7 of which is relevant and quoted below:-

“7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in refiling the appeal with the certified copy should be condoned under Section 5 of the Limitation Act. If the appellant makes out sufficient cause for the delay, the Court may in its discretion condone the delay. As laid down in *Krishna v. Chathappan* [ILR 13 Madras 269, 271] “Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words “sufficient cause” receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.”

8. Counsel for the appellant further placed reliance on the decision of Hon'ble Supreme Court in the matter of **N. Balakrishnan v. M. Krishnamurthy**, [(1998) 7 SCC 123] para 9 to 13 are relevant and reproduced below:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in

certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights 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 Kumari* [AIR 1969 SC 575 : (1969) 1 SCR 1006] and *State of W.B. v. Administrator, Howrah Municipality* [(1972) 1 SCC 366 : AIR 1972 SC 749] .

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

9. Counsel for the appellant further placed reliance on the decision of Hon'ble Supreme Court in the matter of **Executive Officer Antiyur Town Panchayat -v- G. Arumugam (dead) by legal representatives**, [(2015) 3 SCC 569] wherein in para 3 and 4 it has been observed that :-

“3. In the additional affidavit filed on behalf of the appellant on 12-12-2006, it is brought to the notice of this Court that Shri K.G. Ramasamy, who was working as Executive Officer of the Panchayat at the relevant time was suspended from service w.e.f. 12-7-2002 on allegations of corruption. Be that as it may, after going through the records and after hearing the counsel on both sides, we are satisfied that the delay occasioned only on account of the deliberate lapses on the part of the Executive Officer of the Panchayat at the relevant time. Who else are involved in the process, is not quite clear.

4. As held by this Court in *State of Nagaland v. Lipok Ao* [(2005) 3

SCC 752 : 2005 SCC (Cri) 906] , the court must always take a justice-oriented approach while considering an application for condonation of delay. If the court is convinced that there had been an attempt on the part of the government officials or public servants to defeat justice by causing delay, the court, in view of the larger public interest, should take a lenient view in such situations, condone the delay, howsoever huge may be the delay, and have the matter decided on merits.”

10. In the decision of Hon'ble Supreme Court in the matter of **Esha Bhattacharjee v. Raghunathpur Nafar Academy**, [(2013) 12 SCC 649] it has been held that :-

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be

made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

11. In the case in hand judgment and decree was passed on 15-2-2019. Appellant applied for copy on same day and it was delivered to him on 23-2-2019. The appeal could be filed within 90 days from 15-2-2019 i.e. 16-5-2019. Period of 9 days for delivery of copy will be excluded then date is 25-5-2019. There was vacation from 20-5-2019 to 14-6-2019. 15 and 16 of June were holidays, hence appeal could have been presented on opening day which is 17th of June, 2019. Appellant has preferred this appeal on 18-7-2019. The appellant has preferred this appeal with a delay of 30 days.

12. In the case in hand appellant has pleaded in para 2 of his WS that he had purchased the disputed land for a consideration of Rs. 60,000/- from Usman Mohammad. It indicates that his financial position was not weak. Moreover, appellant has paid the court fee in the tune of Rs. 12,400/- which is not excessive. As per the memo of appeal appellant himself shown his age as 45 years. Thus, it cannot be said that he is too old and suffering from any disability.

13. As per the true copy of the order sheet of the 2nd Addl. District Judge, Raigarh dated 26-3-2019 respondent No. 1 had filed the execution on 26-3-2019. Thereafter appellant has preferred this appeal on 18-7-2019.

14. Looking to the above mentioned facts and circumstances of the case, this court finds that in the case in hand, the appellant has raised aforesaid reasons in routine and haphazard manner. Negligence, inaction, want of bonafide is imputable to him. The explanation does smack of malafide or it is put forth as part of dilatory strategy, he has filed said application deliberately to gain time.

15. Looking to the above mentioned facts and circumstances of the case, this Court finds that aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter **Shakuntala Devi Jain** (supra), **N. Balkrishanan** (supra) and **Esha Bhattacharjee** (supra), are applicable against the appellant. Aforesaid observation made by Hon'ble Supreme

Court in the matter of **Executive Officer** (supra) is related to condonation of delay on the part of Executive Officer in large public interest, the facts of this case are totally different from the aforesaid case, thus, appellant does not get any help from the aforesaid observation made by Hon'ble Supreme Court in the matter of **Executive Officer** (supra).

16. Consequently, this Court finds that appellant failed to satisfy this Court that he had sufficient cause for not preferring the appeal within prescribed period. Consequently, I.A. No. 1 is rejected.

17. Consequently, instant First Appeal is also dismissed.

18. In view of above, I.A. No. 2 under order 41 Rule 5 read with Section 151 of CPC is also dismissed.

Sd/-

(Sharad Kumar Gupta)
Judge