

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.67 of 2018**

- Nand Kishore S/o Late Shri Pyarelal Aged About 71 Years Caste Chandra, Residence CMIG 40, Nehru Nagar Korba, District Korba, Chhattisgarh.

---- Appellant**Versus**

1. Mrs. Chanchala Lal Wd/o Late Shri Ashwini Kumar Lal Caste Chandra, R/o Village Birra Tahsil Champa, District Janjgir Champa, Chhattisgarh.
2. Rajesh Kumar S/o Nandkishore Aged About 38 Years Caste Chandra, R/o Hall Mukam MIG 40 Nehru Nagar Budhwari Bazar Ke Pass Korba, Tahsil And District Korba, Chhattisgarh.
3. Pradeep Kumar S/o Nandkishore Aged About 36 Years Caste Chandra, R/o Hall Mukam MIG 40 Nehru Nagar Budhwari Bazar Ke Pass Korba, Tahsil And District Korba, Chhattisgarh.
4. State Of Chhattisgarh, Collector Janjgir District Janjgir- Champa, Chhattisgarh.

---- Respondents

For the Appellant	: Shri BL Sahu, Advocate along with appellant Nand Kishore Lal
For respondent No.1	: Shri Gary Mukhopadhyaya, Advocate
For other respondents	: None

Hon'ble Shri Justice Ram Prasanna Sharma**Order on Board****24.7.2019.**

1. This appeal is filed under Order 43 Rule 1(t) of the Code of Civil Procedure, 1908 against the order dated 27.7.2018 passed by First Additional District Judge, Sakti, Distt. Janjgir-Champa in Civil MJC No.09/2017 wherein the said court dismissed the application filed under Order 41 Rule 19 of CPC for re-admission of appeal No.33A/2015 which was dismissed on default vide order dated 21.9.2016.
2. Respondent No.1 filed suit before the trial Court i.e. the Court of Civil Judge, Jaijaipur, Distt. Janjgir-Champa which was

registered as Civil Suit No.21A/2012 and the said Court decreed the suit vide judgment dated 15.01.2015 in favour of respondent No.1. An appeal was preferred by the appellant against said judgment/decreed before the Court of First Additional District Judge, Sakti which was registered as Civil Appeal No.33A/15 and the same was dismissed for want of prosecution on 21.9.2016. Against the order of the First Appellate Court, second appeal was preferred before this Court which was registered as Second Appeal No.518/2016 in which this Court directed the trial Court to consider the application filed by the appellant vide order dated 10.01.2017. The first appellate Court rejected the application filed by the appellant on the ground that no sufficient cause is shown for re-admission of the appeal and again for the reason that no application for condonation of delay is filed before the said Court.

3. The only question for consideration of this Court is whether the order passed by the first appellate Court attains finality even if the said order is based on technical ground. In every case of delay, there can be some lapse but that alone is not enough to turn down his plea and to shut the door against him. Any application for re-admission of case for hearing on the merits should be interpreted liberally because procedural laws are meant for regulating the conduct of the litigant. Provisions of such laws are not to be used for punishing such defaulters. The first appellate Court was expecting sufficient cause for re-admission of the appeal from the appellant but the fact remains that the expression 'sufficient cause' is adequately elastic to enable the court to apply the law in a meaningful manner which subserves

the ends of the justice that being the life purpose for existence of the institution of the courts. There should not be a pedantic approach when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

4. Looking to the entire scenario, this Court is of the view that the case should be readmitted before the first appellate Court and it should be decided on merits. As the trial Court has decided the issues between the parties in the year 2015, the first appellate Court should hear the case on merits.

5. Accordingly, the appeal is allowed. The Court of First Additional District Judge, Sakti is directed to hear First Appeal No.33A/15 on merits subject to payment of cost to respondent No.1 by the appellant to the tune of Rs.3,000/-. The said Court shall decide the appeal within four months from the date of receipt of a copy of this order.

6. Both the parties shall remain present before the appellate Court, i.e. First Additional District Judge, Sakti (CG) on 19.8.2019.

Sd/-
(Ram Prasanna Sharma)
JUDGE