

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 14.11.2019****Pronounced on 19.11.2019****FA No. 538 of 2018**

Javed Siddiqi S/o Israual Hak Aged About 50 Years R/o Plat No. 69-70, Sunder
Nagar (Dr. Radhakrishna Nagar) Kohka, Bhilai, District Durg CG

---- Appellant**Versus**

Smt. Sashikala Perule Late of Shri S.B. Perule, Aged About 72 Years R/o
Kwatar No. A/158, Road No. 30, Smriti Nagar, Bhilai, District Durg CG

---- Respondent

For appellant	: Mr. Goutam Ketrapal, Adv.
For Respondent	: Mr. Amiyankant Tiwari, Adv.

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

1. By this order I.A. No. 1/2018 application for condonation delay in filing the appeal is being disposed of.
2. The appellant has preferred this appeal against the impugned judgment and decree dated 29.06.2017 passed in Civil Suit No.66A/2014 by Second Additional District Judge, Durg whereby and whereunder the suit of respondent was decreed.
3. In brief the appellant's case regarding I.A. No.1 is that he is an old man and poor person therefore he could not arrange the proper fund to pay the proper court fee hence he could not file the appeal within time.
4. In brief the respondent case regarding I.A. No.1 is that in the case in hand the delay is more than 7 and half months. The said application is filed in a very casual manner to cause delay in proceedings. The appeal as well as instant application is filed with malafide intention. In the execution proceedings, despite of the service of the notice he did not appear in early stage. He had also abused the process server and obstructed in his official work.

5. In the matter of **Shakuntala Devi Jain v. Kuntal Kumari and others**, (AIR 1969 SC 575), Hon'ble Suprem Court in para 7 observed that:-

“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 bonafides is imputable to the appellant.”

6. In the matter of **N. Balakrishnan v. M. Krishnamurthy**, [(1998) 7 SCC 123] Hon'ble Supreme Court in para 9, 10, 11, 12, 13 observed that:-

“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.”

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

The principles applicable to an application for condonation of delay are as follows :-

- (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.”

8. In the case in hand, on behalf of the appellant it has been urged that he is an old man, but as per the memo of appeal, his age

has been shown as 50 years. Thus, it cannot be said that he is too old and suffering from any health problem.

9. This is admitted by the appellant that he was the tenant in disputed house. Moreover, he has failed to show as to what attempts have been made by him to arrange the fund to pay the court fee. Moreover, as per certified copy of the order sheet of the executing Court dated 25-7-2019 he appeared before that Court and filed an application that he will deposit entire due amount within 10 days. If he did not have sufficient means then how he would file such application.

10. Moreover, as per certified copy of the order sheet dated 21-6-2019 of the executing Court and certified copy of attachment warrant dated 21-6-2019, during the execution proceeding on 17-5-2019 he abused and quarreled with process server and obstructed the execution proceeding.

11. Looking to the above mentioned facts and circumstances of the case, this court finds that in the case in hand, negligence, inaction, want of bonafide is imputable to the appellant. The explanation does smack of malafide and it is put forth as part of dilatory strategy, he has filed said application deliberately to gain time. The delay is inordinate delay, thus, doctrine of prejudice is attracted, thus strict approach warrants.

12. 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 matters of **Shakuntala Devi Jain** (supra), **N. Balakrishnan** (supra) and **Esha Bhattacharjee** (supra), are applicable against the appellant. Consequently, this Court finds that appellant has 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.

13. Consequently, instant First Appeal is also dismissed.

14. In view of above, I.A. No. 2 under order 39 Rule 1 and 2, is also dismissed.

Sd/-
(Sharad Kumar Gupta)
Judge