

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.715 of 2018**

Aghnu Ram S/o Shri Hira Lal aged about 50 years R/o Village
Bhardakala Tehsil Gunderdehi, District Balod (CG)

---- Appellant**Versus**

1. Bhagwana Ram S/o Chaitu Ram aged about 44 years, Village
Bhardakala Tehsil Gunderdehi Distrit Balod (CG)
2. State of Chhattisgarh Through the Collector District Balod (CG)

---- Respondents

For Appellant	:	Mr.Avinash Chand Sahu, Advocate
For Respondent No.1	:	Mr.Prasoon Agrawal, Advocate
For Respondent No.2	:	Ms Tripti Rao, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****17.01.2019**

With the consent of learned counsel for the parties, the matter is
heard finally.

1. The substantial question of law involved, formulated and to be
answered in the second appeal preferred by defendant No.1 is as
under:-

“Whether the first appellate Court is justified in
dismissing the first appeal as barred by limitation by
recording a finding which is perverse to the record ?”

[For the sake of convenience, the parties would be referred
hereinafter as per their status shown and ranking given in the
suit before the trial Court].

2. The suit was decreed by the trial Court on 31.3.2018. After obtaining certified copy of the judgment and decree on 22.5.2018, defendant No.1 preferred an appeal under Section 96 of the CPC questioning the decree granted in favour of the plaintiff along with application for condonation of delay stating that he was unwell from 24.5.2018 to 24.6.2018, therefore, he could not prefer an appeal well within time. The appeal was preferred with a delay of 8 days. The said application has been rejected by the First Appellate Court and consequently, appeal has been dismissed.
3. Mr. Avinash Chand Sahu, learned counsel for the appellant/defendant No.1, would submit that the appellant has shown sufficient cause. Therefore, the impugned order deserves to be set aside and first appeal be remitted to the First Appellate Court to dispose of the matter, in accordance with law.
4. On the other hand, Mr. Prashoon Agrawal, learned counsel appearing for respondent No.1, would submit that the First Appellate Court has rightly dismissed the appeal.
5. I have heard learned counsel appearing for the parties and perused the records of the case with utmost circumspection.
6. It is true that there was a delay of 8 days in filing the appeal and application for condonation of delay was filed assigning the reason, but the First Appellate Court has dismissed the application on the ground that no sufficient cause was shown.
7. It is well settled law the Courts should adopt an justice-oriented approach in considering the application for condonation of

delay. However, the Court while allowing such application, has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay.

8. In case of N. Balakrishnan V. M. Krishnamurthy¹, it has been held by the Supreme Court that the sufficient cause has to be construed liberally especially when the delay is not deliberate and malafide. Relevant portion of the report held 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.

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

¹ (1998) 7 SCC 123

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*² and *State of W.B. v. Administrator, Howrah Municipality*³.”

9. Recently, the Supreme Court in the case of **Esha Bhattacharjee V. Managing Committee of Raghunathpur Nafar Academy and others**⁴ has laid down the principles for deciding application for condonation of delay, which has been followed by this Court in case of **Pradeep Majumdar V. Duvas Bai and others**⁵. Para 21 of **Esha Bhattacharjee** (supra) states as under:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

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

2 AIR 1969 SC 575

3 (1972) 1 SCC 366

4 JT 2013 (2) SC 450

5 2013(4) B.L.J. 433

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 encapsule 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, behavior 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 scrutinized 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.”

10. Keeping in view the principle of law laid down by the Supreme Court in above-stated judgments (supra), the facts of the instant case are examined, I find delay of 8 days in filing the appeal and the reasons assigned therein are sufficient for condoning the delay in filing the appeal. It is neither deliberate nor outcome of malafide

action and the cause shown for delay in filing the appeal is “sufficient cause” within the meaning of Section 5 of the Limitation Act.

- 11.** This Court is of the considered opinion that the First Appellate Court has committed illegality in rejecting the application under Section 5 of the Limitation Act. Accordingly, the impugned order dated 8.10.2018 is hereby set aside. Delay in filing the appeal is hereby condoned. The matter is remitted to the First Appellate Court for hearing and disposal on merits in accordance with law. The parties are directed to appear before the First Appellate Court on 25.2.2019. The First Appellate Court is directed to decide the appeal within a period of three months from 25.2.2019. A copy of this order be sent to the concerned First Appellate Court by fax/e-mail. Records be sent back forthwith.
- 12.** The second appeal is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge