

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 285 of 2008**

Khiru S/o Late Tepsi (died) through LR's :-

(a). Lavang Ram, Aged about 38 years, S/o Late Khiru Ram.

(b). Pawan Ram, Aged about 40 years, S/o Late Khiru Ram.

Both are residents of Village Peta, Gram Panchayat Peta, Vikas Khand Bageecha, Tahsil Bageecha, Distt. Jashpur, Chhattisgarh.

---Appellants/LR's of plaintiff

Versus

1.(A). Mst. Mini Bewa W/o Late Johan, Aged 65 years, Caste Uraon, Occupation Agriculturist, R/o Peta, Tahsil Bagicha, Distt. Jashpur, Chhattisgarh.

(B). Nandkeshwar S/o Late Johan, Aged about 40 years, Caste Uraon, Occupation Service, R/o Behind Gov.t High School Jashpur, Distt. Jashpur, Chhattisgarh. Permanent Village Jujgoo, Tahsil Bagicha, Distt. Jashpur, Chhattisgarh.

(c). Vishwanath s/o Johan, Aged about 42 yrs, Caste Uraon, Occupation Agriculturist, R/o Jujgoo, Tahsil Bagicha, Distt. Jashpur, Chhattisgarh.

(D). Shiv Prasad S/o Johan, Aged 35 years, Caste Uraon, Occupation Agriculturist, R/o Jujgoo, Tahsil Bagicha, Distt. Jashpur, Chhattisgarh.

2.Baiga s/o Late Keshav (died) through LR's :-

(A). Smt. Devgadi Bai W/o Late Baiga, Aged about 58 years.

(B). Ashok Ram S/o Late Shri Baiga, Aged about 30 years.

Both are R/o Village Jujgoo, P.H. No. 24, R.N.M. and Tahsil Bagicha, Distt. Jashpur, Chhattisgarh.

3. Rameshwar S/o Keshav, Aged 56 years, Caste Uraon, Occupation Agriculturist, R/o Jujgoo, P.H. No. 234, Ra.Ni.M and Tahsil Bagicha, Distt. Jashpur, Chhattisgarh.

4. Bhuneshwar S/o Johan @ Gahnu, Aged 26 years, Caste Uraon, Occupation Agriculturist, R/o Jujgoo, P.H. No. 24, Ra.Ni.M. and Tahsil Bagicha, Distt. Jashpur, Chhattisgarh.

5. Bhushan S/o Khora, Aged — years, Caste Korwa, Occupation Agriculturist, R/o Jujgoo, P.H. No. 24, Ra.Ni.M. and Tahsil Bagicha, Distt. Jashpur, Chhattisgarh.

6. Chhattisgarh State, through Collector, Jashpurtnagar, Distt. Jashpur, Chhattisgarh.

--- Respondents/Defendants

For Appellants :-

Mr. N.K. Mehta, Advocate

For Respondents No. 1, 3, 4 and 5 :-

Mr. Rakesh Pandey, Advocate

For Respondents No. 2(A) and (B) :-

Mr. Manoj Sinha, Advocate

For Respondent No. 6/State :-

Mr. Ravi Bhagat, Dy. G.A.

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

05/02/2020

1. This second appeal preferred by the appellants/LRs. of plaintiff was admitted for hearing on the following substantial question of law :-

“Whether the lower appellate Court was not justified in taking a hyper technical view in dismissing the appeal as barred by limitation ?”

(For the sake of convenience, the parties will be referred hereinafter as per their status in the trial Court.)

2. Original plaintiff – Khiru Ram filed a suit for cancellation of sale deed dated 12/06/1979, declaration of title, possession and permanent injunction against the defendants which was dismissed by the trial Court vide judgment and decree dated 08/11/2006 against which the plaintiff preferred an appeal under Section 96 of the CPC along with an application for condonation of delay for condoning the delay of 10 days in filing the appeal thereby, assigning the reason that the sole appellant/plaintiff himself was unwell and therefore, he could not contact his counsel and thus, the filing of the first appeal got delayed by 10 days. Learned first appellate

Court did not found favour with the application and rejected it holding that sufficient cause for delay in filing the appeal has not been shown by the plaintiff and ultimately, dismissed the appeal as well vide judgment and decree dated 16/04/2008 against which this second appeal under Section 100 of the CPC has been preferred by the appellants/LRs. Of the plaintiff in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

3. Mr. N.K. Mehta, learned counsel appearing for the appellants/LRs. Of the plaintiff would submit that sufficient cause has been shown by the plaintiff in the application for condonation of delay for delay of 10 days in filing the appeal which is supported by his affidavit and certificate of the village sarpanch and the matter was inquired into, yet the first appellate Court dismissed the appeal on the ground that no sufficient cause has been shown by the plaintiff for delay in filing the appeal, as such, the second appeal deserves to be allowed by setting aside the judgment and decree of the first appellate Court.

4. Mr. Rakesh Pandey and Mr. Manoj Sinha, learned counsel appearing for the respondents would support the judgment and decree passed by the first appellate Court and would submit that the second appeal deserves to be dismissed.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

6. The Supreme Court in the matter of **Collector. Land Acquisition, Anantnag and another v. Mst. Katiji and others**¹ while construing the meaning of "sufficient cause" under Section 5 of the Limitation Act, 1963 held that the Courts should adopt a liberal and justice-oriented approach and condoned the delay of four days in filing appeal, under Section 5 of the Limitation Act, 1963. Their Lordships of the Supreme Court further held that the High Court erred in dismissing the appeal on hyper technical ground of bar of limitation and observed as under: -

"The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same

approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

7. Similarly, the Supreme Court in N. Balakrishnan

v. M. Krishnamurthy² observed that sufficient cause has to be construed liberally especially when the delay is not deliberate and *mala fide*.

Paragraphs 11 and 12 of the report state as under:-

"11. Rule 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. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During 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. 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 putt to litigation). Rules of limitation are not meant to destroy the right 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 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 Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality* [AIR 1972 SC 749]."

8. Thus, applying the principle of law laid down by the Supreme Court in **N. Balakrishnan** (supra) which has been followed by their Lordships in **Bhivchandra Shankar More v. Balu Gangaram More and Ors.**³ to the facts of the case at hand, it is quite vivid that plaintiff's suit for cancellation of the sale deed and declaration of title, possession and permanent injunction was dismissed by the trial Court on merits against which he filed an appeal along with an application for condonation of delay for condoning the delay of 10 days in filing the appeal which was supported by his affidavit as well as the certificate of the village sarpanch and the matter was also inquired into which remained uncontroverted and no evidence was led

against it, as such, in the considered opinion of this Court, sufficient cause has been shown by the plaintiff for the delay of 10 days in filing the appeal. The first appellate Court has gravely legally erred in taking a hyper technical view and rejecting the application for condonation of delay and subsequently, dismissing the appeal as well. The appeal, particularly for declaration of title, ought to have been decided on merits.

9. Consequently, the instant second appeal is allowed. The impugned judgment and decree passed by the first appellate Court is set aside; delay in filing the appeal is condoned and the first appeal is restored to its original file for hearing and disposal on merits in accordance with law preferably within a period of three months from the date of receipt of record and certified copy of this order.

10. Registry is directed to return the records to the first appellate Court forthwith.

Sd/-
(Sanjay K. Agrawal)
Judge