

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.325 of 2009

Mitthu Das, S/o Bhuneshwar Das, aged about 45 years, R/o Pandariya, Tahsil Pandariya, Distt. Kabirdham (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Khagraj Singh (Died) through legal heirs,

1a. Sandep Singh Thakur, S/o Late Khagraj Singh, aged about 42 years,

1b. Ravish Singh Thakur, S/o Late Khagraj Singh, aged about 40 years,

1c. Ritesh Singh Thakur, S/o Late Khagraj Singh, aged about 38 years,

All are R/o Pandariya, Tahsil Pandariya, Distt. Kabirdham (Kawardha) (C.G.)

2. Khem Singh, S/o Gend Singh, aged about 50 years, R/o Village Pandariya, Tahsil Pandariya, Distt. Kabirdham (C.G.)

3. Ajit Singh, S/o Ram Singh, aged about 50 years, R/o Village Pandariya, Tahsil Pandariya, Distt. Kabirdham (C.G.)

4. Rajesh Singh, S/o Chandrabhan Singh, aged about 35 years, R/o Village Pandariya, Tahsil Pandariya, Distt. Kabirdham (C.G.)

5. State of Chhattisgarh, through Collector, Kabirdham, Distt. Kabirdham (C.G.)

(Defendants)
---- Respondents

For Appellant / Plaintiff: -

Mr. Vivek Kumar Tripathi, Advocate.

For Respondents No.1 to 4 / Defendants: -

None present, though served.

For Respondent No.5 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

26/11/2020

1. This second appeal preferred by the plaintiff / appellant herein was admitted for hearing by formulating the following substantial question of law: -

"Whether the lower appellate Court was justified in affirming the judgment and decree of the trial Court by dismissing the appeal on the ground of limitation?"

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

2. The plaintiff's / appellant's suit for declaration of title and permanent injunction was decreed partly confining to the suit house, but dismissed with the regard to the suit plot on 28-12-2006. Against the judgment and decree of the trial Court, the plaintiff preferred appeal on 6-10-2008 with a delay of 613 days along with an application for condonation of delay assigning reason that the appellant was misled and thinking that the suit has been decreed in toto, he could not prefer appeal, but filed application before the Nagar Panchayat, Pandariya that he was only granted declaration of suit house and of suit plot, but on 2-8-2008, it was rejected with regard to the suit plot by which he decided to prefer appeal against the judgment and decree refusing decree with regard to the suit plot. The application was supported by affidavit stating the facts which were not controverted by the other side, but yet, the first appellate Court was of the opinion that the impugned decree of the trial Court is quite clear and there is no doubt that the suit was partly decreed by granting decree in respect of the suit house, but dismissed in respect of the suit plot and therefore the plaintiff is not entitled for condonation of delay of 613 days in filing the appeal and thus, dismissed the appeal against which this second appeal has been

preferred in which substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

3. Mr. Vivek Kumar Tripathi, learned counsel appearing for the appellant herein / plaintiff, would submit that there is no reason for not preferring appeal, as the plaintiff was misled by the judgment of the trial Court that suit has been decreed in toto as having suffered adverse decree with regard to the suit plot. There was no reason in filing the appeal within time, when the application for mutation was rejected by the Nagar Panchayat on 2-8-2008 with regard to the suit plot, he came to know that suit has been dismissed with regard to the suit plot and appeal has to be preferred against the same. Facts mentioned in the application for condonation of delay were not controverted by the other side, therefore, the first appellate Court ought to have granted that application, but, erroneously, though the grounds mentioned in the application constituted sufficient cause for condoning the delay, yet, it was not accepted. The first appellate Court went wrong in not construing the grounds mentioned in the application for condonation of delay liberally especially when the delay is not deliberate or mala fide and it is bona fide. Therefore, the impugned order of the first appellate Court deserves to be set aside by allowing the appeal.
4. None present for the respondents herein / defendants, though served.
5. I have heard learned counsel for the plaintiff / appellant herein and considered his submissions made herein-above and also 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 others¹ 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 the matter of 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

1 (1987) 2 SCC 107

2 (1998) 7 SCC 123

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 v. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal v. The Administrator, Howrah Municipality* [AIR 1972 SC 749].”

8. It is true that the suit was dismissed with regard to the suit plot and it was decreed with regard to the suit house. It is also a fact that the plaintiff applied for correction of record in the Nagar Panchayat and the same was rejected on 2-8-2008 with regard to the suit plot holding that there is no decree of civil court with regard to the suit plot and thereafter, appeal was preferred on 6-10-2008 with a delay of 613 days. It is not the case that delay on the part of plaintiff is deliberate, but is a bona fide one. Even a careful perusal of the decree would show that it does not state specifically that the suit with regard to the suit plot is being dismissed, expressly refusing the decree for suit plot and it is only mentioned that the plaintiff will be entitled for the decree of suit house only. That is the reason which misled the plaintiff not to prefer appeal right in time. If the decree could have been expressed clearly that the suit with regard to plot is dismissed, there is no reason not to prefer appeal right in time by the plaintiff. Since the delay in filing the appeal is *bona fide* and unintentional and the reason assigned appears to be acceptable, the delay in

filing the appeal is condoned and the impugned order of the first appellate Court is hereby set aside. The matter is remitted to the first appellate Court for hearing and disposal in accordance with law after noticing the parties. The appeal will be decided within one month from the date of service notice to the parties. The substantial question of law is answered accordingly.

9. The appeal is allowed to the extent indicated herein-above. Parties shall bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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