

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 81 of 2009**

Kunjalal @ Kunjgali, S/o Govind, Aged about 55 years, Occupation Agriculturist R/o Village Kukradih, Post Joba, P.S. Tumgaon, Tahsil and Distt. Mahasamund, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Shanti Bai W/o Ghanshyam, D/o Bodhan, Aged about 50 years, Caste Teli, R/o Village Patora, Post Barela, Distt. Durg, Chhattisgarh.
2. State of Chhattisgarh, through District Collector, Mahasamund, Distt. Mahasamund, Chhattisgarh.

--- Respondents/Defendants

Mr. Ashok Shukla, Advocate appears as Amicus Curiae	
For Respondent No. 1	:- Mr. Rakesh Thakur, Advocate
For State	:- Mr. Ravi Bhagat, Dy. G.A.

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

13/02/2020

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

“Whether the lower appellate Court was not justified in dismissing the appeal only on the ground of limitation ?”

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

2. Plaintiff filed a suit for declaration of title and permanent injunction against defendant No. 1 which was dismissed by the trial Court on preliminary issue holding the suit to be not maintainable vide judgment and decree dated 23/09/2005 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 8 days in filing the appeal thereby, assigning the reason that though the judgment and decree was delivered by the trial Court on 23/09/2005 but he received the said information through his Advocate on 17/10/2005 and immediately, on the next date, he applied for certified copy in order to file the first appeal, but he received them on 15/12/2005 and on 16/12/2005, he filed the first appeal along with an application for condonation of delay for condoning the delay of 8 days in filing the appeal. 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 13/07/2007 against which this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff in which

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

3. Mr. Ashok Kumar Shukla, learned Amicus Curiae would submit that sufficient cause has been shown by plaintiff in the application for condonation of delay for condoning the delay of 8 days in filing the appeal 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. J.K. Saxena, learned counsel appearing for the respondent/defendants No. 1 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

1(1987) 2 SCC 107

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 up 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 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 declaration of title and permanent injunction was dismissed by the trial Court holding it to be not maintainable against which he filed an appeal along with an application for condonation of delay for condoning the delay of

³ (2019) 6 SCC 387

8 days in filing the appeal stating that he did not receive the information about the judgment and decree of the trial Court on time and thereafter, delay occurred in obtaining the certified copy in order to file the appeal, but the first appellate Court rejected the said application for condonation of delay assigning the reason that sufficient cause for delay of 8 days in filing the appeal has not been shown by the plaintiff and ultimately, dismissed their appeal.

9. In the considered opinion of this Court, sufficient cause has been shown by the plaintiffs for the delay of 8 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.

10. 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.

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

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet