

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 2 of 2011**

Dharmidevi, Ged about 55 years, D/o Asru W/o T.R. Bhattacharya, Caste Rajwar, R/o Village Kusmi, P.S. and Tahsil Kusmi, Distt. Surguja, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Fagni Wd/o Akhnu (died and deleted).
2. Bifaiya D/o Akhnu, Aged about 55 years.
3. Ratan S/o Akhnu, Aged about 50 years.

All by caste Rajwar, R/o Village and Post Sulesa, Tahsil and P.S. Bagicha, Distt. Jashpur Nagar, Chhattisgarh.

4. Najma Begum W/o Samiullah, Aged about 55 years, Caste Musalman, R/o Village Kusmi, P.S. and Tahsil Kusmi, Distt. Sarguja, Chhattisgarh.
5. State of Chhattisgarh, through Collector Sarguja, Ambikapur, Chhattisgarh.

--- Respondents/Defendants

For Appellant	:-	Mr. D.N. Prajapati, Advocate
For Respondents	:-	Mr. Sunil Tripathi, Mr. Ajeya Tripathi and Ms. Varsha Sharma, Advocates
For State	:-	Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

27/02/2020

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

“Whether the court below was justified in dismissing the first appeal of the appellant 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 in which defendants not only controverted the plaint allegations but also filed counter-claim. Plaintiff's suit was dismissed whereas the counter-claim filed by the defendants was granted by the trial Court vide judgment and decree dated 14/05/2010 thereby, directing the plaintiff to deliver the peaceful possession of the suit land to defendant No. 4 against which plaintiff preferred an appeal under Section 96 of the CPC along with an application for condonation of delay for condoning the delay of 106 days in filing the appeal thereby, assigning the reason that her advocate did not inform her about the passing of the judgment and decree by the trial Court and when she received

the notice of execution, she appeared before the trial Court on 11/08/2010 and came to know about the decree passed against her. Immediately thereafter, she filed for the certified copy and after receiving the same, she filed the appeal on 25/08/2010 with an application for condonation of delay of 106 days in filing the appeal which was supported by her affidavit and other necessary documents like that of notice of execution, etc. Learned first appellate Court did not find 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 02/11/2010 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. D.N. Prajapati, learned counsel appearing for the appellant/plaintiff would submit that the application for condonation of delay supported by affidavit and the document of notice of execution remained uncontroverted stating that the delay

caused by the plaintiff is deliberate, as such, delay of 106 days in filing the appeal ought to have been condoned by the first appellant Court as sufficient cause has been shown by the plaintiff in her application for condonation of delay, 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. Sunil Tripathi, learned counsel appearing for the respondents/defendants No. 2 to 4 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 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 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 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 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

³ (2019) 6 SCC 387

of title and permanent injunction was dismissed whereas defendants' counter-claim was granted by the trial Court against which plaintiff filed an appeal along with an application for condonation of delay for condoning the delay of 106 days caused in filing the appeal offering the explanation that the date of passing of the judgment and decree by the trial Court was not informed to her by her advocate and when she received the notice for execution, she appeared before the trial Court and came to know about the trial Court not only dismissing her suit but also granting counter-claim of the defendants wherein she was required to deliver the peaceful possession of the suit land to defendant No. 4, as such, there could be no reason for the plaintiff not to file the appeal within the period of limitation as she has not only suffered the dismissal of her suit but the counter-claim of the defendants has also been granted and that too, directing for delivery of the possession of the suit land to defendant No. 4, as such, in the considered opinion of this Court, sufficient cause has been shown by the plaintiff for the delay of 106 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. Till the appeal is decided, the interim order granted by this Court on 07/01/2011 shall remain in operation. No cost(s).

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

Sd/-
(Sanjay K. Agrawal)
Judge