

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 95 of 2009**

1. Viyogihari, aged about : 60 years, S/o. Raturam,
 2. Sevak Ram, aged about : 45 years, S/o. Raturam,
- Both Agriculturists R/o. Village : Ludeg, Tahsil :
Pathalgaon, Distt. Jashpur (C.G.)

....Appellants/defendants**Versus**

1. Gurudayal Singh, S/o. Mahendra Singh, aged about :
32 years.
2. Manjeet Singh, S/o. Mahendra Singh, aged about : 36
years.
3. Narendra Singh, S/o. Mahendra Singh, aged about :
23 years.
4. Smt. Preetam Singh Kaur, Wd/o. Mahendra Singh, aged
about : 50 years,

All Occupation : Business, A// R/o. Village : Ludeg,
Tahsil : Pathalgaon, Distt. Jashpur (C.G.)

---- Respondents

For Appellants/defendants : Mr. Parag Kotecha, Advocate.
For Respondents : Mr. A.N. Bhatra, Advocate.

Alogwith**Contempt Case (C) No. 365 of 2011**

Gurudayal Singh, aged about 53 years, son of Shri Mahendra
Singh, resident of Bazarpara, Pathalgaon, Distt. Jashpur

....Petitioner/Complainant**Versus**

1. Viyogihari, aged about 60 years, son of Raturam.
 2. Sevak Ram, aged about 45 years, son of Raturam
- Both are agriculturist,. R/o Vill Ludeg, Tah.

Patthalgaon, Distt. Jashpur (C.G.)

----- Respondents

For Petitioner : Mr. A.N. Bhakta, Advocate.
For Respondents/contemnors: Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/03/2020

1. Heard on IA No. 1, application for condonation of delay in filing the appeal.

2. Instant second appeal preferred by the appellants/defendants under Section 100 of the Code of Civil Procedure is barred by 1794 days. The appellants have filed an application under Section 5 of the Limitation Act for condoning the aforesaid delay stating *inter alia* that though the first appellate Court had passed judgment & decree on 28.11.2002 but original defendant Ratu Ram died on 28.10.2006 and before his death he was seriously ill, from October, 2002 till his date of death i.e. 28.10.2006. The present appellants/defendants were not aware about the aforesaid judgment already delivered by the first appellate Court, therefore, they could not prefer appeal right in time.

3. The plaintiffs, by filing reply to application for condonation of delay filed by defendants, denied the averments made by the defendants/appellants in the application.

4. Mr. Parag Kotecha, learned counsel appearing for the appellants/defendants would submit that original defendant – Ratu Ram was seriously ill from October, 2002 and ultimately died on 28.10.2006 and, then, legal representatives of original defendant came to know about the passing of the judgment & decree by the first appellate Court on 03.11.2007 and, thereafter, on 25.01.2008, the second appeal was preferred, as such, sufficient cause has been shown for the delay of 1794 days in filing the second appeal.

5. Shri A.N. Bhakta, counsel for the respondents/plaintiffs would submit that there is no explanation at all in the application for condonation of delay in filing the appeal preferred by appellants from the date of passing of the judgment and decree by the first appellate Court i.e. on 28.11.2002 till 28.10.2006 (date of death of original defendant Ratu Ram), thereafter, also there is no explanation from 28.10.2006 to 03.11.2007 and, thereafter, also three months time has been taken for filing the second appeal from the date of knowledge, which has not been satisfactorily explained by the defendants.

6. I have heard learned counsel appearing for the parties and perused the material available on record with utmost circumspection.

7. At this stage, it would be appropriate to notice application for condonation of delay, which states as under:-

" APPLICATION FOR CONDONATION OF DELAY

The appellant begs to submit as under:-

1. That, they are filing above second appeal against judgment and decree dated 28.11.2002 passed by the Lower Appellate Court.
2. That, original defendant Ratu Ram, died on 28.10.2006, before his death he was seriously ill, from October 2002 till his death.
3. That, the father of the appellant Ratu Ram did not told the appellant about the pendency of the aforesaid litigation and civil appeal from the first time came to know when the notice of the executive court was received by them. Thereafter they applied for certified copy of the judgment and decree which was received by them on 3.11.2007.
4. That, of knowledge the appeal within time the delay is bonafidly deserves to be condoned.
5. An affidavit in support of this application is being filed herewith.

PRAYER

It is therefore, prayed that the delay in filing appeal may kindly be condoned, in the interest of justice accordingly."

8. A careful perusal of the aforesaid application would show that the lower appellate Court passed the impugned judgment & decree on 28.11.2002 and according to the

appellants, original defendant Ratu Ram was seriously ill from October, 2002 till 28.10.2006 i.e. his date of death but there is no medical certificate filed alongwith the application for condonation of delay to demonstrate that he was seriously ill at the relevant point of time, therefore, he could not prefer appeal right in time. Similarly, original defendant died on 28.10.2006 and the second appeal was preferred on 25.01.2008 i.e. after a period of more than one year but still there is no satisfactory explanation for delay of one year thereafter and even the cause assigned that they came to know from the Executing Court but no such document has been filed about the source of information that they allegedly received the information about the passing of the impugned judgment and decree on 3.11.2007.

9. It is correct to say that while dealing with the application for condonation of delay, sufficient cause has to be construed liberally but in the instant case, as noticed hereinabove, for the inordinate delay of 1794 days, there is no explanation at all offered and only casual application has been filed; matter is pending since 25.01.2008 i.e. for the last 12 years. The appellants have not taken care even to file additional affidavit in support of application for condonation of delay, if any, as such, I do not find any sufficient ground for condoning

the inordinate delay of 1794 days in filing the appeal. Therefore, delay occurred in filing the appeal cannot be condoned.

10. Accordingly, IA No. 1, application for condonation of delay in filing the appeal is dismissed.

11. Consequently, appeal is also dismissed as barred by limitation. No order as to costs.

12. At this stage, Mr. A.N. Bhakta, learned counsel appearing for the appellants/contemnor, would submit that since the second appeal is being dismissed, he is not interested in continuing the contempt petition.

13. Accordingly, Contempt Case (C) No. 365 of 2011 is closed.

Sd/-

(Sanjay K. Agrawal)
Judge

