

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 61 of 2009

Khemsingh, S/o Garud Singh, Aged about 51 years,
R/o. Komakhan, Tahsil & District Mahasamund (C.G.)

----- Appellant/defendant

Versus

1. Revti Bai (since deceased) through LRs:-

1[A] Ram Singh Gond, Husband of Revti Bai, aged about 72 years,

1[B] Nakul Thakur, S/o Ram Singh Gond, aged about 50 years,

1[C] Dan Singh, S/o Ram Singh Gond, aged about 45 years,

All above R/o Village Bhaluchua, Tahsil Mahasamund, District Mahasamund (C.G.)

2. Devki Bai (since deceased) through LRs:-

2[A] Kaushilya Bai, Wd/o Late Sumar Singh, aged about 42 years, R/o Village Barbekera, Post - Kamakhan, Police Station - Kamakhan, District Mahasamund (C.G.)

3. Banshilal, S/o Garud Singh Gond, Aged about 46 years,

4. Nohar Singh, S/o. Garud Singh Gond, Aged about 26 years,

5. Meena Ram, S/o. Garud Singh Gond, Aged about 43 years,

6. Dulam Bai (deleted)

7. Meena Bai (since deceased) through LRs:-

7[A] Champa Bai Thakur, W/o Roopkant Thakur, aged about 27 years, R/o Village Bagarpali, Post Gonch, Police Station Pithora, District Mahasamund (C.G.)

8. Basanta Bai, D/o. Garud Singh Gond, Aged about

41 years,

All respondents named above from Serial No. 3 to 8 are R/o. Village Barbekera, P.H. No. 111/58, Tahsil & District Mahasamund (C.G.)

----- Respondents

For Appellant	:	Mr. Manoj Paranjpe & Mr. Anurag Singh, Advocates
For Legal Representatives of Respondents No. 1 & 2	:	Mr. Vivek Kumar Tripathi, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/10/2020

(1) Proceedings of the matter have been taken-up through video conferencing.

(2) The substantial question of law involved, formulated and to be answered in this defendant's second appeal states as under:-

“Whether the first appellate Court is justified in dismissing the appeal as barred by limitation and recording finding which is perverse and contrary to record ?

(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).

(3) Respondents/plaintiffs' suit for partition, declaration of title and possession was decreed by the trial Court on 20-2-2001, against which defendant

preferred first appeal under Section 96 of CPC along with application under Section 5 of the Limitation Act for condonation of delay of 29 days in filing the appeal duly supported by affidavit stating *inter alia* that on account of ill health, he was under treatment and, therefore, he could not prefer appeal right in time and, therefore, the delay of 29 days in filing the first appeal before the first appellate Court is *bonafide* and therefore, the delay be condoned and appeal be heard on merits.

(4) The First Appellate Court did not found favour with the application for condonation of delay and finding no sufficient cause for delay in filing the appeal, dismissed the application for condonation of delay and consequently appeal was also dismissed. Against which, this second appeal has been preferred by the appellant/defendant, in which the substantial question of law formulated for consideration and which has been incorporated in the opening paragraph of the judgment for the sake of completeness.

(5) Learned counsel appearing for the appellant, would submit that the finding recorded by the first appellate Court holding that sufficient cause has not been shown for condoning the delay in filing the first appeal is

perverse and contrary to the law laid down by the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy**¹

(6) Per contra, learned counsel appearing for the legal representatives of respondents No. 1 & 2, while supporting the impugned order would submit that no sufficient cause has been shown by defendant for condoning the delay in filing the first appeal.

(7) I have heard learned counsel appearing for the parties and perused the records of both the courts below including judgment and decree impugned with utmost circumspection.

(8) The Supreme Court in **N. Balakrishnan (supra)** observed that the sufficient cause has to be construed liberally especially when the delay is not deliberate and *mala fide*. Paras 11 & 12 of the said decision are as under :

“11. Rules 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal

1 (1998) 7 SCC 123

injury so suffered. Time is precious and wasted time would never revisit. During the 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. The 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 rights 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.
Administrator, Howrah Municipality {AIR
1972 SC 749}."

(9) Thus, applying the ratio laid down by the Supreme Court in **N. Balakrishnan** (supra) to the facts of the case at hand, it is quite vivid that application for condonation of delay of 29 days in filing the first appeal duly supported by affidavit has been filed by the defendant and he has clearly stated that on account of ill-health, he was under treatment and merely because the medical prescriptions have not been filed, it cannot be held that he was not under medical treatment, even otherwise, a person, having suffered decree from the trial Court, would not unnecessarily, on his own, delay the filing of appeal before the higher court by which he would get nothing except running the risk of dismissal of the application for condonation of delay and thereby dismissing the appeal without hearing the same on merits. In the considered opinion of this Court, sufficient cause was shown by the defendant before the first appellate Court for condoning the delay in filing the appeal.

(10) As a sequel, the instant second appeal is partly allowed. The impugned order dated 19.09.2001 is set aside; delay in filing the first appeal is condoned; and

restored the Civil Appeal No. 16-A/2001 to its original file of the 2nd Additional District Judge, Mahasamund, for hearing and disposal in accordance with law on its own merits.

(11) The First Appellate Court is directed to decide the appeal on its merit expeditiously preferably within a period of 45 days from the date of receipt of certified copy of this order and if physical hearing is not possible, it will be done by video conferencing.

(12) Registry is directed to return back the records to the first appellate Court forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

