

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 436 of 2009**

1. Smt. Rampyari Rathore, widow of Late Ram Kishan Rathore, aged about 60 years, resident of Rathore Chowk, Jawahar Nagar, Ward, Raipur.

2. Jitendra Kumar Rathore, son of Late Ram Kishan Rathore, aged about 39 years.

3. Mukesh Kumar Rathore, son of Late Ram Kishan Rathore, aged about 33 years.

No. 2 & 3 are residents of Near Prabhat Talkies, Raipur, Tehsil & District Raipur (C.G.)

----- Appellants/defendants No. 1 to 3

Versus

1. Bhushan Lal Rathore, son of Late Ram Ratan Rathore, aged about 55 years, resident of Rathore Chowk, Jawahar Nagar Ward, Raipur.

2. Roopchand Rathore, son of Late Ram Ratan Rathore, aged about 68 years, resident of Rathore Chowk, Jawahar Nagar Ward, Raipur.

Both residents of Near Prabhat Talkies, Raipur, Tehsil & District Raipur (C.G.)

----- Respondents

For Appellants	:	Ms. Anuja Sharma, Advocate.
For Respondent No. 1	:	Mr. Y.C. Sharma, Advocate.
For Respondent No. 2	:	Mr. Chakresh Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/08/2020

(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 defendants' No. 1 to 3 second appeal states as under:-

“Whether the first appellate Court was justified in rejecting the application for condonation of delay holding that sufficient cause has not been shown for the delay of 42 days thereby dismissed the appeal by recording a finding which is perverse and contrary to the 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) The respondent No. 1/plaintiff's suit for permanent injunction was decreed by the trial Court on 30.04.2009, against which defendants No. 1 to 3 preferred first appeal under Section 96 of CPC along with application under Section 5 of the Limitation Act for condonation of delay of 42 days in filing the appeal supported by affidavit stating *inter alia* that defendant No. 1 is old aged woman and she remained hospitalized from 26.09.2009 to 11.08.2009 [for which the medical certificate of treating doctor has already been filed] and thereby defendants No. 2 & 3, being the sons of said appellant No.1, were busy in taking care of his ailing mother (defendant No. 1), therefore, they could not prefer

appeal right in time and, therefore, the delay of 42 days in filing the first appeal before the first appellate Court is *bonafide* and therefore, the delay be condoned.

(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 appellants/defendants No. 1 to 3 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 respondent No. 1, while supporting the impugned order would submit that no sufficient cause has been shown by

1 (1998) 7 SCC 123

defendants No. 1 to 3 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 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 would appear that appellant No.1/defendant No.1 is old aged woman and she remained

hospitalized from 29.6.2009 to 11.8.2009, for which medical certificate of the treating doctor has already been filed and the defendants No. 2 & 3, being her sons, are busy in taking care of his ailing mother (defendant No.1), therefore, they could not prefer appeal right in time and that constitute sufficient cause for delay of 42 days in filing the first appeal. In the considered opinion of this Court, sufficient cause was shown by the defendants No. 1 to 3 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 7.9.2009 is set aside; delay in filing the first appeal is condoned; and restored the appeal (unregistered first appeal) to its original file of the Court of District Judge, Raipur, for hearing and disposal in accordance with law on its own merits. It is made clear that no fresh notice is required to be issued.

(11) The parties are directed to appear before the first appellate Court on 14th September, 2020.

(12) The First Appellate Court is directed to decide the appeal on its merit expeditiously preferably within a period of one month 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.

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

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

