

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 248 of 2010

1. Nanki Bai (Died) Through Lrs. As Per Honble Court Order Dated 04-02-2020.

(I) Ramprasad S/o Late Rajnath Aged About 49 Years R/o Village- Sarmana, Tahsil- Batoli, District- Sarguja, C.G.

(II) Ambika Prasad S/o Late Rajnath Aged About 54 Years R/o Village- Sarmana, Tahsil- Batoli, District- Sarguja, C.G.

(III) Manmati D/o Late Rajnath Aged About 58 Years R/o Village- Sarmana, Tahsil- Batoli, District- Sarguja, C.G.

(IV) Paraspatti D/o Late Rajnath Aged About 56 Years R/o Village- Sarmana, Tahsil- Batoli, District- Sarguja, C.G.

(V) Kuleshwari D/o Late Rajnath Aged About 52 Years R/o Village- Sarmana, Tahsil- Batoli, District- Sarguja, C.G.

(Plaintiffs)

---- **Appellants**

Versus

1. Hirmaniya W/o Gangal Sai Aged About 62 Years R/o Village Boda, Tahsil Sitapur, District Sarguja, Chhattisgarh.

2. Champa S/o Satyanarayan Aged About 24 Years R/o Boda, Tahsil Sitapur, District Surguja, Chhattisgarh.

3.State of Chhattisgarh Through The District
Collector, Surguja, Ambikapur, Chhattisgarh.

4.Smt. Sonapati D/o Mangal Sai Aged About 40
Years Caste- Kanwar, R/o Village Boda,
Khamharpara, Police Station Batauli, Tahsil
Sitapur, District Surguja, Chhattisgarh.

(Defendants)

----- Respondents

For Appellants :-

Mr. Sanjay Agrawal, Advocate

For Respondents No. 1, 2 and 4 :-

Mr. Aditya Chopra, Advocate

For Respondent No. 3/State :-

Mr. Anshuman Rabra, P.L.

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

07/02/2020

1. This second appeal preferred by the
appellants/legal representatives of
plaintiff was admitted for hearing by
formulating the following substantial
question of law:-

"Whether the first appellate Court was
justified in rejecting the application
for condonation of delay and
consequently, dismissing the appeal by
recording a perverse finding holding
that no sufficient cause has been shown

by the appellant/plaintiff for the delay in filing the appeal ?”

(For the sake of convenience, the parties will herein-after be referred as per their status before the trial Court)

2. Plaintiff's suit for partition, possession and for cancellation of sale deed was dismissed by the trial Court on merits on 29.01.2004 against which the appellant/plaintiff preferred first appeal along with the application for condonation of delay for condoning the delay of three days in filing the appeal assigning the reason that his maternal cousin died and so, he remained busy in the last rites of his maternal cousin, therefore, delay of three days has occurred in filing the appeal. The application was supported by an affidavit. Learned first appellate Court dismissed the said application for condonation of delay of three days in filing the appeal on the ground that sufficient cause has not been shown by the appellant/plaintiff for delay of three days and consequently, dismissed the appeal against which this Second Appeal

under Section 100 of the CPC has been filed by the plaintiff in which substantial question of law has been formulated and incorporated in the opening paragraph of the judgment.

3. Mr. Sanjay Agrawal, learned Counsel for appellants / legal representatives of plaintiff would submit that the first appellate Court is absolutely unjustified in holding that sufficient cause has not been shown for delay of three days in filing the appeal and therefore, the order of the first appellate Court deserves to be set aside.

4. Mr. Aditya Chopra, learned counsel for Respondents No. 1, 2 and 4, would support the impugned judgment and decree passed by the first appellate Court and would submit that second appeal deserves to be dismissed.

5. I have heard learned counsel for the parties, considered their rival submissions made herein above and also went through the record with utmost circumspection.

6. The Supreme Court in the matter of Collector. Land Acquisition, Anantnag and another v. Mst. Katiji and others¹ while construing the meaning of "sufficient cause" under Section 5 of the 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

¹ (1987) 2 SCC 107

² (1998) 7 SCC 123

deliberate and *mala fide*. Paragraphs 11 and 12 of the report state 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 cause 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. 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 in the present case sufficient cause was shown by the plaintiff for filing the appeal with a delay of three days stating that her maternal cousin died and she was busy in the last rites/ dasgatra/ tervi and therefore, she could not prefer the appeal right in time. Learned Additional District Judge has taken a hypertechnical view in rejecting the application for condonation of delay of three days in filing the appeal and consequently, dismissing the appeal of the plaintiff which is not acceptable. Accordingly, the impugned order dated 15.04.2004 passed by the fifth Additional District Judge (F.T.C.), Ambikapur in C.A.

³ (2019) 6 SCC 387

No.1/2004 is hereby set aside and the matter is restored to its original number to the file of the fifth Additional District Judge (F.T.C.), Ambikapur. The first appellate Court is directed to consider the appeal and dispose of the same after hearing the parties within three months from the date of receipt of copy of this order. The parties are directed to appear before that Court on 2nd of March, 2020. Registry is directed to return the records to the first appellate Court forthwith.

9. The Second Appeal is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit