

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 291 of 2008**

1. Abraham S/o Patras, Aged 52 years, Occupation Agriculturist.

2. Ishaak S/o Patras (died) through LRs. :-

(a). Amit Alex Tirky, Aged about 34 years, S/o Late Ishaak Tirky, R/o Village Aasta, P.H. No. 6, R.N.M. Manoura, Tahsil Jashpur, Distt. Jashpur, Chhattisgarh.

3. Johan S/o Late Patras, Aged about 35 years, Occupation Service.

All the appellants Caste Uraon, R/o Village Aasta, P.H. No. 6, R.N.M. Manoura, Tahsil Jashpur, Distt. Jashpur, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Gabriyal Tirki S/o Piyush, Aged 55 years.

2. Khristofar Tirki S/o Piyush, Aged 45 years.

3. Amrensia Tirki S/o Piyush, Aged 58 years.

4. Ku. Albina Tirki D/o Late Piyush, Aged 40 years.

5. Mu. Sabina Tirki W/o Late Piyush, Aged 70 years.

All caste Uraon, R/o Village Aasta, P.H. No. 6, R.N.M. Manoura, Tahsil Jashpur, Distt. Jashpur, Chhattisgarh.

6. State of Chhattisgarh, through Collector, Jashpurnagar, Distt. Jashpur, Chhattisgarh.

--- Respondents/Defendants

For Appellants	:-	Mr. Neeraj Mehta, Advocate
For Respondents	:-	Mr. J.K. Saxena, Advocate
For State	:-	Mr. Akash Pandey, Panel Lawyer

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

12/02/2020

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

"Whether the lower appellate Court was not justified in taking hyper technical view in dismissing the appeal as barred by limitation ?"

(For the sake of convenience, the parties will be referred hereinafter as per their status in the trial Court.)

2. The three plaintiffs filed a suit for declaration of title and confirmation of possession qua the suit land against the defendants which was dismissed by the trial Court vide judgment and decree dated 30/03/2007 against which the plaintiffs preferred an appeal under Section 96 of the CPC along with an application for condonation of delay for condoning the delay of 3 days in filing the appeal thereby, assigning the reason that stamp paper for payment of Court fees could not be received right in time thus, the filing of the first appeal got delayed by 3 days. Learned first appellate Court did not found favour with the application and rejected it holding that sufficient cause for delay in filing the appeal has not been

shown by the plaintiffs and ultimately, dismissed the appeal as well vide judgment and decree dated 17/07/2008 against which this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

3. Mr. Neeraj Mehta, learned counsel appearing for the appellants/plaintiffs would submit that sufficient cause has been shown by plaintiffs in the application for condonation of delay for condoning the delay of 3 days in filing the appeal which is supported by his affidavit 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. J.K. Saxena, learned counsel appearing for the respondents/defendants 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 herein-

above 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 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 deliberate and *mala fide*. Paragraphs 11 and 12 of the report state as under:-

1(1987) 2 SCC 107

2 (1998) 7 SCC 123

"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 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 plaintiffs' suit for declaration of title and confirmation of possession was dismissed by the trial Court on merits against which he filed an appeal along with an application for condonation of delay for condoning the delay of 3 days in filing the appeal stating that stamp paper for making payment of Court fees was not available and so delay of 3 days occurred in filing the appeal which was supported by his affidavit and which remained uncontroverted and no evidence was led against it, but the first appellate Court rejected the said application for condonation of delay assigning the reason that the appeal could have been filed without judicial stamp paper and thereafter, time for payment of Court fees could have been obtained by the plaintiffs rather than causing unnecessary delay and ultimately, dismissed their appeal.

9. In the considered opinion of this Court, sufficient cause has been shown by the plaintiffs for the delay of 3 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.

10. 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.

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

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet