

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 356 of 2009**

1. Smt. Aasha Jain (died) through Lrs. :-

(a). Binod Kumar Jain S/o Late Shri Dayalchand Jain, Aged about 78 years.

(b). Vivek Jain S/o Binod Kumar Jain, Aged about 36 years.

(c). Smt. Ritu Jain D/o Binod Kumar Jain, Aged about 33 years.

All R/o Golbazar, Jagdalpur, District Bastar, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Late Swadesh Ranjan Saha (Died) through LRs. :-

(a). Shisher Ranjan Saha, S/o Late Swadesh Ranjan Saha, Aged about 62 years.

(b). Sameer Ranjan Saha S/o Late Shri Swadesh Ranjan Saha, Aged about 55 years.

(c). Suveer Ranjan Saha S/o Late Shri Swadesh Ranjan Saha, Aged about 45 years.

All are R/o Kumharpara, Maitrisangh Marg, Jagdalpur, District Bastar, Chhattisgarh.

2. State of Chhattisgarh, Through Collector Jagdalpur Central Bastar, Chhattisgarh.

--- Respondents/Defendants

For Appellants :- Mr. Subhash Yadav and
Ms. Rajkumari Yadav, Advocates
For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

26/11/2020

1. This second appeal preferred by the appellant/plaintiff (now, her LRs.) under Section 100 of CPC has been admitted for hearing on the following substantial question of law :-

“Whether the lower appellate Court was justified in dismissing the appeal on the ground of limitation ?”

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

2. Plaintiff filed a civil suit for declaration of title and for confirmation of possession over the suit land in which the defendants not only opposed the suit but also filed counter-claim seeking declaration of title and possession.

3. Learned trial Court, vide its judgment and decree dated 29/09/2008, dismissed the suit of the

plaintiff, however, decreed the counter-claim of the defendants.

4. Questioning the judgment and decree of the trial Court, plaintiff preferred first appeal with a delay of 7 days along with an application for condonation of delay stating that her file went missing in the office of the Advocate concerned and the application was supported by the affidavit of the Advocate, therefore, the appeal could not be filed on time and a delay of 7 days occurred.

5. The said application for condonation of delay was not controverted by the other side, but learned first appellate Court, finding no merit in the said application, rejected it and consequently, dismissed the appeal vide judgment and decree dated 06/04/2009 against which this second appeal has been preferred by the appellant/plaintiff (now her Lrs.)

6. Mr. Subhash Yadav, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in not condoning the delay of 7 days as the application for condonation of delay supported by the affidavit of the Advocate remained uncontroverted, as such, the application for condonation of delay

ought to have been allowed by the first appellate Court.

7. None appeared on behalf of the respondent/defendant No. 1 (his Lrs.) though served.

8. I have heard learned counsel for the appellant/plaintiff, considered his submission and perused the record.

9. The Supreme Court in the matter of **Collector. Land Acquisition, Anantnag and another v. Mst. Katiji and others**¹ 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

1(1987) 2 SCC 107

merits in preference to the approach which scuttles a decision on merits."

10. 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:-

"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 up sit finis litium* (it is for the general welfare that a period be putt 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

2 (1998) 7 SCC 123

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]."

11. 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 plaintiff's suit for declaration of title and confirmation of possession was dismissed whereas defendant's counter-claim was granted by the trial Court against which plaintiff filed an appeal along with an application for condonation of delay for condoning the delay of 7 days in filing the appeal offering an explanation that her file went missing in the office of the Advocate which was also supported by the affidavit of the said Advocate and which remained uncontroverted by the other side, as such, in the considered opinion of this Court sufficient cause has been shown by the plaintiff for the delay of 7

³ (2019) 6 SCC 387

days in filing the appeal. Learned first appellate court has legally erred in taking a hyper-technical view of the matter and rejecting the application for condonation of delay and subsequently dismissing the appeal of the plaintiff.

12. Consequently, the judgment and decree passed by the first appellate Court is hereby 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 one month from the date of appearance of the parties. Registry is directed to return the records to the first appellate Court forthwith.

13. The second appeal is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet