

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 153 of 2009**

1. Subran (now deceased) S/o Ayodhya Ram.
2. Smt. Leela Bai W/o Subran, Aged about 45 years.

Both by caste Chik, R/o village Baro, Tahsil Kunkuri, Distt. Jaspur, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Namit Sai S/o Ram Bilas, Aged about 40 years, R/o Village Kansabel, Tahsil Kunkuri, Distt. Jashpur, Chhattisgarh.
2. State of Chhattisgarh, through Collector Jashpur Nagar, Distt. Jaspur, Chhattisgarh.

--- Respondents/Defendants

For Appellant	:- Mr. Akhilesh Kumar, Advocate
For State	:- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

02/07/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on I.A. No. 1, application for condonation of delay in filing this second appeal under Section 100 of the CPC. The present application is filed by the appellant/plaintiff for

condonation of delay of 793 days in filing the appeal.

3. Mr. Akhilesh Kumar, learned counsel for the appellants/plaintiffs, would submit that the civil suit and the first appeal were contested on behalf of both the plaintiffs by plaintiff No. 1 Subran himself, but after the judgment of the first appellate Court was pronounced, plaintiff No. 1 died and his wife plaintiff No. 2 was not aware of the judgment and decree passed by the first appellate Court and when she got to know about it, she preferred this second appeal on 13/02/2008, therefore, delay of 793 days in filing the appeal be condoned as sufficient cause has been shown by plaintiff No. 2.

4. The application for condonation of delay (I.A. No. 1) has been drafted very casually. Paragraphs 1 to 3 of the said application state as under :-

Application of condonation of delay

"The appellant above named humbly submits as under :-

1. That the appellant preferred a present appeal and as submitted in detail in the memo of appeal, the appellant has every hopes to succeed in the appeal. That for sake of brevity the contents of the memo of

appeal may kindly be treated as a part of this application.

2. That, the appellant no. 1 is a person who is contesting the suit very diligently and but after the death of the appellant no. 1, and when the appellant no. 2 came to know about the judgment and decree passed the learned court's below, he immediately contract the local counsel to approached the Hon'ble Court and in this process there is some delay in filing the appeal.

3. That delay is due to bonafide reasons and the appellants are diligent in contesting the case and continuously appearing before the learned court's below. That great justice has been done with the appellants and they are deprived from there property, without receiving the consideration and further a fraud had been committed with the appellants by the respondent."

5. A careful perusal of the aforesaid application would show that the first appeal was contested by both plaintiff No. 1 namely Subaru and his wife plaintiff No. 2 namely Leela Bai. Then, it appears that plaintiff No. 1 died, but the date on which he died has not been mentioned anywhere in the entire record, neither in the memo of appeal nor in the application for condonation of

delay. The date of death of plaintiff No. 1 is not apparent and plaintiff No. 2 has simply pleaded that she was not aware of the judgment and decree passed by the first appellate Court, so the second appeal has been filed with a delay of 793 days.

6. The first appeal was dismissed on 12/09/2005 and the second appeal was filed on 13/02/2008 i.e. after 793 days, but in the entire application for condonation of delay quoted herein-above, there is no mention of the date of death of plaintiff No. 1 Subaru nor has it been anywhere mentioned about the date on which plaintiff No. 2 Leela Bai came to know about the judgment and decree passed by the first appellate Court and no particulars have either been given with regard to plaintiff No. 2 contacting the local counsel and thereafter filing the second appeal with an inordinate delay of 793 days.

7. True it is that sufficient cause provided under Section 5 of the Limitation Act has to be construed liberally, but some cause much less sufficient cause has to be shown for condoning the delay particularly, when the delay is of more than two years. No such sufficient cause has been

shown for condonation of delay of 793 days in filing the second appeal.

8. Accordingly, I.A. No. 1, application for condonation of delay in filing the appeal is rejected and consequently, the second appeal is hereby dismissed on the ground of delay of 793 days in filing the appeal. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet