

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 335 of 2009**

Mehattar, aged about 45 years, S/o Rituram, Caste – Nishad, R/o. Village – Sai Saraipali, P.H.N. 59/35, Tahsil & District – Mahasamund (C.G.)

----- Appellant/defendant

Versus

1. Sheeshram, aged about 52 years, S/o Ratan Singh, Caste – Nishad, Occupation – Agriculturist, R/o. Village – Sai Saraipali, P.H.N. 59/35, Tahsil and District – Mahasamund (C.G.)
(Plaintiff)

2. The State of Chhattisgarh Through : The Collector, Mahasamund, District – Mahasamund (C.G.)
(Defendant)

----- Respondents

For Appellant : Mr. Harshwardhan Parganiya, Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/08/2020

(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 defendant's 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 delay of five months thereby dismissed the appeal by

recording a perverse finding ?

(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 plaintiff's suit for declaration of title and delivery of possession was decreed by the trial Court on 29.06.2007, against which defendant preferred first appeal under Section 96 of CPC along with application under Section 5 of the Limitation Act for condonation of delay of five months in filing the appeal stating that the counsel, who appeared on behalf of the defendant before the trial Court, did not inform him about the delivery of the judgment and thereafter when the defendant enquired the matter by visiting the Court on 29.11.2007, then he came to know that judgment & decree has already been delivered on 29.06.2007 against him and thereafter he applied for certified copy of the judgment of the decree of the trial Court on the same day and obtained it on 03.12.2007 and, thereafter, he consulted with the Advocate and filed the first appeal on 10.12.2007 and, therefore, the delay of five months 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 appellant/defendant 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) Non for respondent No. 1, though served.

(7) I have heard learned counsel appearing for the appellant/defendant 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 :

¹ (1998) 7 SCC 123

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 though the judgment & decree was delivered by the trial Court against the defendant on 29.06.2007 in presence of his counsel but there is uncontroverted evidence on record that his counsel did not inform the defendant that he has suffered adverse decree of declaration of title and delivery of possession, which is appealable, therefore, he could not prefer appeal right in time and that constitute sufficient cause for delay of five months in filing the first appeal. In the considered opinion of this Court, sufficient cause was shown by the defendant 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 23.10.2008 is set aside; delay in filing the first appeal is condoned; and restored the appeal bearing civil appeal No. 14-A/2007 to its

original file of the Court of Additional District Judge, Mahasamund, for hearing and disposal in accordance with law on its own merits. The First Appellate Court is directed to complete the service upon respondent and thereafter decide the appeal expeditiously preferably within a period of two months from the date of receipt of certified copy of this order.

(11) Registry is directed to send back the records to the first appellate Court forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

