

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Civil Revision No.150 of 2017**

Ashok Kumar Bhelwa, S/o Late P.S. Bhelwa, Aged About 61 Years, R/o C/o Shri Samit Bhelwa, Qtr. No.2/B, Street No.7, Sector 7, Bhilai, Tahsil & District Durg, Chhattisgarh.

**---- Applicant****Versus**

1. District Medical Officer (Civil Surgeon), Office of District Health Hospital, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
2. Smt. Lidya Thamas, W/o Late John Thamas, Aged About 87 Years, R/o 13/5, Vikabhai Ki Chal, Tankapara, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
3. General Public.
4. Smt. Amita Masih, W/o Late Shri Alexzender Masih, Aged About 38 Years, R/o 127/7 New Railway Colony, Mandir Road, Satna, District Satna, Madhya Pradesh.
5. Smt. Vijyeta Das, W/o Shri Ashish Das, Aged About 34 Years, R/o New Pension Bada, House No.H-29 Raipur, District Raipur, Chhattisgarh.

**---- Non-Applicants**


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| For Applicant                | : Shri Uttam Pandey, Advocate.                                    |
| For State/Non-Applicant No.1 | : Shri Vimlesh Bajpai, G.A.                                       |
| For Non-Applicant No.2       | : Shri Aman Yadav appears on behalf of Shri B.P. Singh, Advocate. |
| For Non-Applicant No.3       | : None, though served through paper publication.                  |
| For Non-Applicants No.4 & 5  | : Shri B.P. Rao, Advocate.                                        |

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**Hon'ble Shri Justice Sanjay S. Agrawal****Order On Board****13.02.2020**

1. This revision petition has been preferred by Ashok Kumar Bhelwa under Section 388 (3) of the Indian Succession Act 1925 (hereinafter referred to as 'the Act of 1925') (wrongly mentioned as Section 115 of the Code of Civil Procedure), questioning the legality and propriety of the order dated 07.07.2017 passed by the 6<sup>th</sup> Additional District Judge, Durg, in Case No.33/2016, by which, the appeal preferred by the Applicant under Section 388 (2) of the Act of 1925 has been dismissed while refusing to condone the delay in preferring the same. The parties to this Revision Petition shall be referred hereinafter as per their description in the trial below.
2. Briefly stated the facts of the case are that an application for obtaining the succession certificate under Section 372 of the Act of 1925 has been made by the Applicant on account of the death of his wife, namely, Smt. Vijiya Bhelwa for obtaining the retiral dues and pensionary benefits. During the pendency of the said proceeding, an application has been made by the Applicant on 12.01.2010, whereby he has relinquished his claim with regard to the other funds and confined his claim only to the pensionary benefits and the same was allowed by the Trial Court vide order dated 24.01.2011 and, in pursuance thereof, the succession certificate has been granted on 19.09.2011.

3. The aforesaid certificate is, however, revoked by the 2<sup>nd</sup> Civil Judge Class-I, Durg, vide order dated, 12.05.2016 in MJC No.5/2012 in exercise of the powers enumerated under Section 383 of the Act, 1925 initiated by the Non-Applicant No.2/The District Medical Officer, Rajnandgaon.
4. Being aggrieved with the revocation of the said certificate, the Applicant has preferred an appeal, as per the provisions prescribed under Section 388 (2) of the Act 1925 along with an application for condonation of its delay under Section 5 of the Indian Limitation Act, 1963 (for short, 'the Act of 1963'). It is stated by the Applicant in his application for condonation of delay that because of the advice of his original counsel that the appeal was required to be filed before the Hon'ble High Court, he approached the counsel of the High Court after obtaining the certified copy of the said order. However, he was advised that an appeal was in fact required to be filed before the concerned District Judge and not before the Hon'ble High Court. It is submitted further that due to the said ill-advice of his original counsel, the appeal could not be filed in time, however, there was no malafide intention behind it and prayed for condonation of delay of few days occurred bonafidely under the said circumstances.
5. Upon receiving the notice of the said appeal along with the said application, the Respondents have made their appearance, but have not filed any reply to the said application for condonation of delay in filing the appeal. The appellate Court, however, vide order impugned dated 07.07.2017 has refused to condone the delay by observing *inter alia*, that the

necessary particulars regarding the whereabouts of the concerned advocates were neither disclosed in the application nor their affidavits were filed in support thereof. As a consequence, the appellate Court has rejected the said application and consequently the appeal was dismissed. This is the order, which has been impugned by way of this revision petition.

6. Shri Uttam Pandey, learned counsel appearing for the Applicant submits that while considering the application for condonation of delay under Section 5 of the Act of 1963, the appellate Court ought to have adopted a liberal view, particularly, when there is no inordinate delay in filing the appeal. According to him, the said application for condonation of delay in preferring the appeal was duly supported by an affidavit and the same was not controverted by the Non-Applicants. Therefore, under such circumstances, the reasons so assigned ought to have been accepted by the Court below while adopting a liberal view in order to provide substantial justice to the parties. Having failed so, the Court below has committed an illegality in refusing to condone the delay of few days in filing the said appeal. In support, he placed his reliance upon the decision rendered in the matter of **N. Balakrishnan Versus M. Krishnamurthy**, reported in **(1998) 7 SCC 123** and **M/s. GMG Engineering Industries And Others Versus M/s. ISSA Green Power Solution And Others** reported in **AIR (2015) S.C. 2675**.
7. On the other hand, learned counsel appearing for Non-Applicants Nos.1 & 2 while supporting the order impugned

submits that despite obtaining the certified copy of the said order on 27.05.2016, the appeal was not filed immediately thereafter and was filed only on 06.09.2016 without assigning any sufficient and satisfactory reasons. The Court below has, therefore, rightly rejected the said application for condonation of delay in preferring the said appeal.

8. I have learned counsel for the parties and perused the entire record carefully.
9. Before advertng to the facts in hand, it is necessary to examine the provision prescribed under Section 5 of the Act of 1963, which reads as under:-

**“5. Extension of prescribed period in certain cases. –** Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

***Explanation.--*** The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

10. Perusal of the aforesaid provision makes it clear that the Legislature had left the term “sufficient cause” undefined and unillustrated for what is “sufficient cause” in one case may not be so in another case. Thus, the said term is kept elastic and unfettered discretion has been conferred on the Courts to do substantial justices considering the facts and circumstances of the case. No hard and fast rule, therefore, can be laid regarding condonation of delay. The sums and substance

would be that the discretion has to be exercised judicially and the approach of the Court should be liberal and pragmatic, but not pedantic.

11. Based upon the aforesaid provision, the expression “sufficient cause” has to be construed liberally in order to provide substantial justice to the parties unless and until the appeal is preferred by an inordinate delay. Here in the instant case, the order was passed by the trial Court on 12.05.2016 in MJC No.5/2012 by revoking the certificate as granted to the Applicant in pursuance to the order dated 24.01.2011 while allowing his application filed under Section 372 of the Act of 1925. It appears that an application for obtaining the certified copy of the aforesaid order was made on 16.05.2016 and in pursuance thereof, it was delivered on 27.05.2016 and appeal was thereafter preferred on 06.09.2016 under Section 388 (2) of the Act of 1925. The appeal was, thus, delayed by 74 days. It appears from perusal of the said application for condonation of delay that due to ill-advice of the counsel, it could not be filed in time.
12. Pertinently to be observed and noted here that the reasons assigned by the Applicant in his said application were duly supported by an affidavit and which were not controverted by the Non-Applicants. In absence thereof, the reasons as assigned by the Applicant which were duly supported by an affidavit cannot be held to be unreasonable as observed by the Court below while adopting a hyper technical approach. However, the Court below ought to have adopted a liberal

view by condoning the delay in filing the appeal in order to provide substantial justice to the parties.

13. At this juncture, the principles laid down in the matter of **N. Balakrishnan Versus M. Krishnamurthy** (supra) are to be noted, wherein it has been held by the Supreme Court that sufficient cause has to be construed liberally especially when the delay is not inordinate and mala fide. Relevant paragraphs 11 and 12 of the said judgment reads 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 causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan 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].”

14. Similar is the view taken by the Supreme Court in the matter of **M/s. GMG Engineering Industries And Others Versus M/s. ISSA Green Power Solution And Others** (supra) while interpreting the said expression “sufficient cause” at paragraph 8, which reads as under:-

8. It is well settled that the expression 'sufficient cause' is to receive liberal construction so as to advance substantial justice. When there is no negligence, inaction or want of bona fide is imputable to the appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence

15. Applying the aforesaid principles to the case in hand and in view of the reasons assigned in the application for condonation of delay in preferring the appeal under Section 388 (2) of the Act of 1925, which was even not controverted by the Non-Applicants, deserves to be and is hereby allowed, and delay of 74 days in filing the said appeal is, thus, condoned.
16. Consequently, the revision petition is allowed and the impugned order dated 07.07.2017 is hereby set aside. The delay in filing the appeal under Section 388 of the Act of 1925 questioning the order dated 12.05.2016 passed by the 2<sup>nd</sup> Civil Judge Class-I Durg in MJC No.5/2012 is accordingly condoned. The said appeal is restored to its original file before the 6<sup>th</sup> Additional District Judge, Durg/concerned Court for hearing and disposal of the same on merits in accordance

with law. The parties are hereby directed to appear before the concerned Court on 15.04.2020. The appellate Court is directed to decide the appeal on merits as expeditiously as possible as the order passed by the trial Court revoking the said certificate was made way back on 12.05.2016.

17. Registry is directed to send back the entire record to the concerned appellate Court, forthwith. No order as to costs.

Sd/-  
**(Sanjay S. Agrawal)**  
Judge

Deepti Jha