

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 711 of 2019**

Rambai, W/o Chainu Ram Lodhi, Aged about 57 years, R/o Village Ghotwani, P.H. No. 16, Revenue Circle Dhamdha, Tahsil Dhamdha, District Durg, Chhattisgarh.

---Appellant/Plaintiff

Versus

State of Chhattisgarh, Through the Collector, Durg, District Durg, Chhattisgarh.

--- Respondent/Defendant

For Appellant	:-	Mr. Praveen Dhurandhar, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

27/01/2020

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

"Whether the first appellate Court was justified in dismissing the appeal as barred by limitation by recording a finding which is perverse and contrary to the record ?"

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

2. Plaintiff filed a suit for declaration of title and permanent injunction which was opposed by the State stating that plaintiff is neither entitled for declaration of title nor for permanent injunction.

3. Learned trial Court eventually partly decreed the suit holding that plaintiff is only entitled for permanent injunction but not for declaration of title, being aggrieved by which, plaintiff preferred an appeal under Section 96 of the CPC along with an application for condonation of delay explaining therein the cause of filing the appeal with a delay of 163 days, but the first appellate Court did not find favour with the application for condonation of delay and rejected it and consequently, by its impugned judgment and decree, dismissed the appeal also. Questioning the said judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the plaintiff in which substantial question of law has been formulated and set out in the opening paragraph of this judgment.

4. Mr. Praveen Dhurandhar, learned counsel for the appellant/plaintiff would submit that the finding

recorded by the first appellate Court holding that sufficient cause has not been shown by the plaintiff for condoning the delay of 163 days in filing the first appeal is perverse and contrary to the law laid down by the Supreme Court in the matter of N. Balakrishnan v. M. Krishnamurthy¹, as such, the second appeal deserves to be allowed by setting aside the judgment and decree of the first appellate Court.

5. On the other hand, Mr. Ravi Bhagat, learned State counsel, while supporting the impugned judgment and decree of the first appellate Court, would submit that no sufficient cause has been shown by the plaintiff for filing the appeal with a delay of 163 days, as such, the second appeal deserves to be dismissed.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

7. The Supreme Court in N. Balakrishnan (supra) observed that sufficient cause has to be construed liberally especially when the delay is

¹ (1998) 7 SCC 123

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 ut 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 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.² to the facts of the case at hand, it is the case of the plaintiff that he was not informed about the decree of the trial Court by his counsel, therefore, he could not prefer the appeal right in time and that constitutes sufficient cause for delay in filing the appeal, even otherwise, plaintiff would not get any benefit by not filing the appeal right in time as his suit was only partly decreed by the trial Court. In the considered opinion of this Court, sufficient cause was shown by the plaintiff before the first appellate Court for condoning the delay in filing the appeal.

9. 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 before the Court of 1st Additional Judge,

2 (2019) 6 SCC 387

Durg, preferably within a period of three months from the date of receipt of record and certified copy of this order. No cost(s).

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

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet