

HIGH COURT OF CHHATTISGARH, BILASPUR**F.A No.528 of 2019**

Mukesh Dewangan S/o Baliram Dewangan Aged About 45 Years R/o Village Ward No. -14, Parpodhi, Police Station - Parpodhi, Tehsil - Saza, District - Bemetara Chhattisgarh.

---- Appellant**Versus**

1. Suresh Kumar S/o Mohitram Nishad Aged About 28 Years R/o Village - Tiriyaabhat, Police Station - Parpodhi, Tehsil - Saza, District - Bemetara Chhattisgarh.
2. Smt. Bhagmati S/o Manrakhan, S/o Baishakhu Sahu, R/o Village - Kukurmudha, Tehsil - Chhuikhadan, District Rajnandgaon Chhattisgarh. (Defendant No. 1)
3. Panchu Sahu S/o Manrakhan Sahu Aged About 40 Years R/o Village - Parpodhi, Police Station - Parpodhi, Tehsil - Saza, District - Bemetara, Chhattisgarh. (Defendant No. 3)

-----Respondents

For Appellant:	Shri Vishnu Koshta appears along with Shri Shobhit Koshta, Advocates.
For Respondent No1:	Shri Malay Jain, Advocate.
For Respondents No.2 & 3:	None, though served.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J
Judgment on Board

14.12.2020

1. Heard on I.A.Nos.01/2019 and 03/2020, which are the applications filed by defendant No.2- Mukesh Dewangan under Section 5 of the Indian Limitation Act, 1963 read with Order 41 Rule 5-A of C.P.C. seeking condonation of delay of 278 days in preferring this Appeal. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. According to learned counsel for the Appellant/Defendant No.2, the delivery of impugned judgment and decree dated 30.11.2018 passed in Civil

Suit No.7-A/2018 was not informed to the Appellant by his lower Court's Counsel and he came to know about it only on 14.10.2019, when he received the notice from the executing court. It is contended further that as per the advice of his Counsel, he was under an impression that he was a formal party in the suit and the main dispute is only between the Plaintiff-Suresh Kumar and Defendant No.1- Smt. Bhagmati. It is contended further that upon discussion and deliberation, he contacted the counsel of the High Court for preferring an Appeal, who, in turn, advised him to obtain the certified copy of the impugned judgment and decree dated 30.11.2018 along with other relevant papers. Acting upon his advise, he collected necessary papers and arranged the requisite court fee which took some time as he belongs to the lower middle class family. It is contended further that the alleged delay has occurred bonafidely owing to the said circumstances and therefore, it may be condoned for proper adjudication of the matter. In support, reliance has been placed upon the decision rendered in the matter of Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others and Ashok Kumar Bhelwa v. District Medical Officer (Civil Surgeon), Office of District Health Hospital reported in **AIR 1987 Supreme Court 1353** and **AIR 2020 Chhattisgarh 149 : AIROnline 2020 Chh 354**, respectively.

3. In reply to the aforesaid application, it is stated by learned Counsel for Respondent No.1/Plaintiff/ Decree Holder that the delay in preferring the Appeal is huge and the application in this regard has been filed without explaining the same in a satisfactory manner. According to him, in the earlier application i.e. I.A.No.01/2019, it was stated by the Appellant/Defendant No.2 that due to his sickness, he could not contact his Counsel and arrange the court fee, however, contrary and altogether new reasons have been assigned in the subsequent application dated 23.11.2020, i.e. I.A.No.03/2020, which is entirely inconsistent to the statement sworn on affidavit in support of the

earlier application i.e. I.A.No.01/2019. It is contended further that the Appellant/Defendant No.2 cannot be permitted to file two contrary affidavits and while inviting the attention of the Court to the certified copy of the impugned judgment and decree annexed with the memo of Appeal, contended that in fact an application for obtaining the same was made immediately upon the pronouncement of the judgment and decree under Appeal on 04.12.2018 and in pursuance thereof, it was delivered to him on 10.12.2018, yet, he preferred the Appeal only on 10.12.2019. Further contention of him is that the alleged date of knowledge of the impugned judgment and decree i.e. 14.10.2019, as stated by the Appellant/Defendant No.2 in the application (I.A.No.03/2020), was in fact the date of hearing before the concerned executing Court and therefore, based upon such false and concocted explanations, the applications as framed deserve to be rejected. In support, he placed his reliance upon the decision rendered in the matter of Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai reported in **(2012) 5 Supreme Court Cases 157** and also in the matter of Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others reported in **(2013) 12 Supreme Court Cases 649**.

4. Perusal of the impugned judgment and decree would show that the claim of the Plaintiff for specific performance of contract based upon an agreement to sale dated 10.10.2015 was decreed in part while directing for refund of the earnest amount of Rs.1,75,000/- which Defendant No.2-Mukesh Dewangan had received from the Plaintiff with 6% interest per annum from the date of the said agreement till the date of actual payment while holding that Defendant No.1 and 2 are jointly and severally liable for it on finding that Defendant No.2 has obtained the alleged earnest money from the Plaintiff by projecting himself to be the owner of the property in question and failed to fulfill his oral assurance as given for the execution of the sale deed in favour

of the Plaintiff.

5. It appears from a bare perusal of these applications (I.A.Nos.01/2019 and 03/2020) that false and inconsistent explanations have been offered by Defendant No.2 in order to get the discretionary relief of the Court. According to the earlier application (I.A.No.01/2019), filed on 10.12.2019, it was stated that due to his sickness, he could not contact his Counsel and arrange the requisite Court fee as he belongs to lower middle class family, while in subsequent application (I.A.No.03/2020), it was stated that he was not informed by his lower Court's Counsel regarding the delivery of the impugned judgment and decree, which was, however, not the reason assigned in his earlier application. According to him, he came to know about the said judgment only on 14.10.2019 when he received the notice from the executing court. It was, however, the date of hearing and not the date of receiving the said notice as alleged by him. It, thus, appears to be a new and concocted plea, which has been taken in order to get the delay condoned in filing this Appeal. That apart, a bare perusal of the certified copy of the impugned judgment and decree annexed with the memo of Appeal would disclose the fact that an application for obtaining the same was already made by him on 04.12.2018 and in pursuance thereof, it was delivered on 10.12.2018, yet, a fabricated and a false plea has been taken with an ulterior motive in order to get the condonation of delay of 278 days in preferring this Appeal. In view of that, Defendant No.2 is not entitled to get the delay condoned on such a concocted plea and the applications are liable to be rejected.

6. At this juncture, the principles laid down by the Supreme Court in the matter of Maniben Devraj Shah vs. Municipal Corporation of Brihan (supra) are to be seen, where it has been held at paragraphs 23 and 24 as under:-

“23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power

under [Section 5](#) of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.”

“24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

7. Yet, in the matter of Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others (supra), certain guidelines have been laid down by the Supreme Court in this regard, out of which, the following are relevant for the purpose of this Appeal, which read as under:-

“21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.”

“21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.”

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“22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.”

8. Applying the aforesaid principles to the case in hand, I do not find that the explanations offered by the Appellant/Defendant No.2 for condonation of delay in filing this Appeal are genuine and as such, the same deserve to be rejected.

9. In so far as the principles laid down by the Supreme Court in the matter of Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others (supra), as relied upon by learned Counsel for the Appellant/Defendant No.2 are concerned, the same are however, distinguishable from the facts involved herein. As in the said matter, while considering the explanation offered by the State Government, the delay of 4 days in preferring the Appeal was condoned and it was observed further that the doctrine of equality before law with regard to all the litigants, including the "State", are same and are accorded with the same treatment. Subsequent reliance of the Counsel for the Appellant in the matter of Ashok Kumar Bhelwa v. District Medical Officer (Civil Surgeon), Office of District Health Hospital (supra) is also of no use as in the said matter, the explanation for delay of 74 days was offered by the Appellant on the ground that because of ill-advice of his Counsel, instead of preferring the Appeal before the District Judge as provided under Section 384 of the Indian Succession Act, 1925 he approached the High Court by filing the Appeal for the quashment of the order whereby, the Succession Certificate granted to him was revoked under Section 383 of the said Act. The explanation so offered, supported by an affidavit, was not controverted therein and in view thereof, it was condoned. The principles laid down, therefore, are distinguishable.

10. In view of above, I do not find any proper and satisfactory explanation so as to exercise a discretionary power to condone the delay in preferring this

appeal.

11. The applications are accordingly rejected and consequently, the Appeal is dismissed. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Priya