

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 485 of 2012**

1. Than Singh S/o Nandlal, Aged about 45 years.
2. Mannu S/o Nandlal Aghariya, Aged about 53 years.
3. Jeevardhan S/o Nandlal Aghariya, Aged about 40 years.

All above R/o Village Teka, Police Station Pithora, Post Pithora, Distt. Mahasamund, Chhattisgarh.

---Appellants/Defendants

Versus

1. Chandrashekhar S/o Devchand Choudhary, Aged about 14 years, Minor, through his Father/Next Friend Namely Devchand Choudhary, S/o Ramchandra Choudhary, Aged about 45 years, R/o Village Teka, Police Station Pithora, Post Pithora, Distt. Mahasamund, Chhattisgarh. **– Plaintiff**

2. State of Chhattisgarh, Through Collector, Mahasamund, Police Station Civil Lines, Mahasamund, Post Mahasamund, Distt. Mahasamund, Chhattisgarh.

--- Respondents

For Appellants :- Mr. Vivek Mishra, Advocate

For Respondent No. 1 :- None

For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15/02/2021

1. This second appeal preferred by the appellants/defendants was admitted for hearing on the following two substantial questions of law :-

“1. Whether the lower appellate Court was justified in dismissing the appeal on the ground of limitation that too of 16 days ?

2. Whether the lower appellate Court was justified in affirming the judgment and decree of the trial Court especially when the ground for condonation of delay in filing the appeal has been negated ?”

[For the sake of convenience, the parties will herein-after be referred as per their status before the trial Court.]

2. Plaintiff's suit for mandatory injunction and for damages was partly decreed by the trial Court vide judgment and decree dated 19/02/2009. Feeling aggrieved, the defendants preferred first appeal under Section 96 of CPC along with a delay of 16 days along with an application under Section 5 of the Limitation Act for condonation of delay in filing the appeal supported by his affidavit assigning the reason that immediately after

passing of the judgment and decree by the trial Court, on 20/02/2009, defendant No. 1 met with an accident and suffered fracture due to which he was confined to bed and could not prefer the appeal right on time.

3. The said application for condonation of delay was not controverted by the other side, but learned first appellate Court, finding no merit in the said application, rejected it and consequently, dismissed the appeal vide judgment and decree dated 29/08/2012 against which this second appeal has been preferred by the appellants/defendants in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.

4. Mr. Vivek Mishra, learned counsel for the appellants/defendants, would submit that learned first appellate Court is absolutely unjustified in rejecting the application for condonation of delay and ultimately, dismissing the appeal as the delay of 16 days in filing the appeal has sufficiently been explained and it remained uncontroverted, as such, the impugned judgment and decree passed by the first appellate Court be dismissed, the delay of 16 days in filing the appeal be condoned and

the matter be remitted to the first appellate Court for hearing and disposal on merits.

5. None for respondent No. 1/plaintiff, though served.

6. I have heard learned counsel for the appellants/defendants, considered his submissions and perused the records carefully.

7. The Supreme Court in the matter of **Collector. Land Acquisition, Anantnag and another v. Mst. Katiji and others**¹ while construing the meaning of "sufficient cause" under Section 5 of the Limitation Act, 1963 held that the Courts should adopt a liberal and justice-oriented approach and condoned the delay of four days in filing appeal, under Section 5 of the Limitation Act, 1963. Their Lordships of the Supreme Court further held that the High Court erred in dismissing the appeal on hyper technical ground of bar of limitation and observed as under: -

"The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

1(1987) 2 SCC 107

8. Similarly, the Supreme Court in N. Balakrishnan v. M. Krishnamurthy² observed that sufficient cause has to be construed liberally especially when the delay is 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 put 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]."

9. 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.**³ to the facts of the case at hand, it is quite vivid that that defendants' appeal was filed along with an application for condonation of delay of 16 days in filing the appeal under Section 5 of the Limitation Act assigning the reason therein that immediately on the next day of passing of the judgment and decree by the trial Court on 19/02/2009, defendant No. 1 met with an accident on 20/02/2009 and suffered with fracture due to which he was confined to bed for a month and could not prefer the appeal right on time and ultimately, after obtaining the copy of the judgment and decree of the trial Court from his Advocate, he filed the appeal on 09/04/2009 with a delay of 16 days. Learned first appellate Court went absolutely wrong in holding that since the

3 (2019) 6 SCC 387

Doctor has not been examined in evidence, therefore the fact that defendant No. 1 suffered with fracture and was confined to bed cannot be accepted. The first appellate Court has taken a hypertechnical view of the matter in not accepting the reasonable explanation offered by defendant No. 1 in his application for condonation of delay. Moreover, there is no counter-affidavit filed on behalf of the plaintiff controverting the application for condonation of delay filed by defendant No. 1. It is well settled law as noticed herein-above that when the delay is not deliberate and mala fide, sufficient cause has to be construed liberally. It is not the case that the delay on the part of the defendants was deliberate or that the explanation put forth by defendant No. 1 in the application for condonation of delay supported by his affidavit is false or mala fide.

10. Consequently, the judgment and decree passed by the first appellate Court is hereby set aside. The 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 preferably within a period of three months from the date of appearance of the parties.

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

11. The second appeal is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet