

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CIVIL REVISION No. 7 of 2021**

Reserved on 1-2-2021

pronounced on 5-2-2021

Bahadur Singh S/o Jagmohan Singh Rajput, Aged About 65 Years R/o
Village Chhote Atarmuda Raigarh, Tahsil And District Raigarh CG

.....(Decree Holder/ Plaintiff)

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

State of Chhattisgarh through the District Collector Raigarh District Raigarh
CG

.....(Judgment Debtor/ Defendant)

---- **Non-applicant**

For applicant	: Mr. Sunil Tripathi, Adv.
For non-applicant	: Mr. D.C. Verma, Govt. Adv.

Hon'ble Mr. Sharad Kumar Gupta, Judge**C.A.V. ORDER**

1. Applicant has preferred instant Civil Revision against the order dated 26-12-2020 passed by 1st Civil Judge Class 1, Raigarh in Civil MJC No. 2/2012 whereby and whereunder he allowed the application filed under Section 5 of the Limitation Act by the non-applicant.
2. The applicant had filed a civil suit No. 67-A/2002 before the 1st Civil Judge Class 1, Raigarh. Thereafter, it was transferred to 3rd Civil Judge Class 2, Raigarh on 26-2-2001. On the very day, 3rd Civil Judge Class 2, Raigarh proceeded *ex parte* against the non-applicant. Thereafter, the case was transferred to 2nd Civil Judge Class 2, Raigarh. He passed an *ex parte* judgment and decree on 26-4-2002.
3. Thereafter, non-applicant filed an application under Order 9, Rule 13 of the Civil Procedure Code (in short 'CPC') on 2-7-2003. Said application was registered as Civil MJC No. 2/2012. The said MJC was rejected by trial Court on 8-10-2012. Being aggrieved, non-applicant preferred Misc. Civil Appeal No. 47/2012 before 5th Addl. District Judge, who rejected the appeal vide order dated 17-7-2015 and affirmed the order of the trial Court. Being

aggrieved, non-applicant preferred WP (227) No. 1091/2015. Coordinate bench of this Court set aside both the orders dated 8-10-2012 and 17-7-2015 and restored said MJC with directions.

4. Thereafter, 1st Civil Judge Class 1, Raigarh decided an application filed under Section 5 of the Limitation Act by the non-applicant on 26-12-2020 in favour of non-applicant.

5. Being aggrieved, applicant preferred this civil revision.

6. In brief, the applicant's case regarding the revision is that non-applicant has not filed aforesaid application within 3 months from the date of order of coordinate bench of this Court i.e. 27-9-2018 hence, the aforesaid application is not maintainable, on date of *ex parte* order i.e. 26-2-2001 the Court had called the Govt. Adv. through messenger but he did not appear in the Court, applicant had given an application before the Tehsildar Raigarh for mutation along with certified copy of the *ex parte* judgment and decree on 1-2-2003 hence he came to know about the *ex parte* judgment and decree on 1-2-2003, the said MJC was filed on 2-7-2003 and for delay there is no sufficient cause, the impugned order suffers from illegality and gross irregularity. Hence, it may be set aside.

7. In brief, the non-applicant's case is that after the transfer of the case no notice was given to him for hearing, before 26-4-2002 the State of MP was reorganized and thereafter the disputed land was no longer belonging to the MP Government, he came to know about the *ex parte* judgment and decree on 2-7-2003 when Kelo Vihar Colony was constructed near the disputed land and some resident of said colony informed Tehsildar Raigarh about the same.

8. Counsel for the applicant placed reliance on the judgment of Hon'ble Jammu and Kashmir High Court in the matter of **State of J and K and anr. -v- Chuni Lal and others [AIR 2012 J&K 16]**, para 9 of which is relevant and extracted below :-

“9. The appellants writ respondents have not even given the details as to how delay has crept-in in filing the appeal in hand and what were the reasons which were beyond their control in causing the delay. It is also not mentioned in the petition that how many days delay had crept-in. Even otherwise, it appears that appeal is merit less.”

9. To resolve the controversy it would be pertinent to mention the provisions of Article 123 of the Limitation Act which reads as under :-

“123. To set aside a decree Thirty The date of the decree or passed ex parte or to rehear an days where the summons or appeal decreed or heard ex notice was not duly served, parte. when the applicant had knowledge of the decree.

Explanation.—For the purpose of this article, substituted service under Rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not be deemed to be due service.

10. It would be noteworthy to mention the provisions of Section 5 of the Limitation Act 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, 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....”

11. Section 115 of the CPC is also relevant which reads as under :-

“115. Revision [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

xxx xxx xxx”

12. In the matter of **Shakuntala Devi Jain v. Kuntal Kumari**, (AIR 1969 SC 575), Hon'ble Supreme Court observed in para 7 as under :-

“7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in refiling the appeal with the certified copy should be condoned under Section 5 of the Limitation Act. If the appellant makes out sufficient cause for the delay, the Court may in its discretion condone the delay. As laid down in *Krishna v. Chathappan* [ILR 13 Madras 269, 271] “Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words “sufficient cause” receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.”

13. Hon'ble Supreme Court in the matter of **N. Balakrishnan v. M. Krishnamurthy**, [(1998) 7 SCC 123] observed in para 9 to 13 as under :-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights 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 v. Kuntal Kumari* [AIR 1969 SC 575 : (1969) 1 SCR 1006] and *State of W.B. v. Administrator, Howrah Municipality* [(1972) 1 SCC 366 : AIR 1972 SC 749].

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part

of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

14. In the decision of Hon'ble Supreme Court in the matter of **Esha Bhattacharjee v. Raghunathpur Nafar Academy**, [(2013) 12 SCC 649] it has been held that :-

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally

unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(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.

(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.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) 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.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to

the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

15. The coordinate bench of this Court while dealing with the said writ petition directed trial Court by order dated 27-9-2018 that he will dispose of the said MJC within 3 months from the date of receipt of certified copy of the order, both the parties have liberty to file application / affidavit / addl. reply.

16. As per the certified copy of order of 1st Civil Judge Class 1, dated 26-12-2020, the copy of order of coordinate bench was received by him on 4-5-2019. Hence, limitation of 3 months shall commence from the date 4-5-2019. On 20-5-2019 non-applicant filed an application under Section 5 of Limitation Act. Hence, it is clear that said application was filed within 3 months from 4-5-2019. Hence, this Court finds that trial Court had not committed any illegality or irregularity in giving finding that said application is filed within stipulated time of 3 months. Hence, this Court disallows the argument raised by counsel for the applicant in this regard.

17. In the case in hand, civil suit No. 67-A/2002 was filed before the 1st Civil Judge Class 1, Raigarh which was transferred to 3rd Civil Judge Class 2, Raigarh on 26-2-2001 and on the very day the 3rd Civil Judge Class 2, Raigarh proceeded *ex parte* against non-applicant, thereafter the case was transferred to 2nd Civil Judge Class 2, Raigarh who passed *ex parte* judgment and decree. Very peculiar fact in the case in hand that before proceeding the *ex parte* against the non-applicant transferee court 3rd Civil Judge Class 2, and before passing the *ex parte* judgment and decree the transferee Court 2nd Civil Judge Class 2, Raigarh did not give the notice to non-applicant. Moreover, on 1-11-2000 the CG State was formed under the State Reorganization Act, 2000, it means that on the date of *ex parte* proceeding i.e. 26-2-2001 and on the date of passing *ex parte* judgment and decree i.e. 26-4-2002 the disputed land was no longer belonging to MP Govt. Instead of it, it was belonging to CG Govt.

18. Looking to the aforesaid facts and circumstances, it is not material that non-applicant came to know about the *ex parte* judgment and decree on 1-2-2003.

19. It does not appear that aforesaid application is filed in routine and haphazard manner, negligence, inaction, want of bonafide is imputable to non-applicant, the delay do smoke of malafide.

20. Looking to the above mentioned facts and circumstances of the case, this Court finds that aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter **Shakuntala Devi Jain** (supra), **N. Balkrishanan** (supra) and **Esha Bhattacharjee** (supra), are applicable against the applicant.

21. Looking to the above mentioned facts and circumstances of the case, this Court finds that instant revision is not fit for admission, because the trial Court did not commit illegality or material irregularity and instant revision is not maintainable. Consequently, instant revision is not admitted for final hearing and dismissed at motion hearing stage.

Sd/-
(Sharad Kumar Gupta)
Judge