

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 244 of 2010**

1. Ramvriksha Gond, S/o. Late Raghuwar Gond, aged about 49 years,
 2. Suvlal Gond, S/o. Late Raghuwar Gond, aged about 46 years,
 3. Mangaru, S/o. Late Raghuwar Gond, aged about 44 years,
- All above R/o. Village Gurmuti, Tahsil Wadrafnagar, Distt. Surguja (CG)

---- Appellants**Versus**

1. Babulal Gond, S/o. Late Sapenti Gond, aged about 44 years,
 2. Ramlal Gond, S/o. Late Sapenti Gond, aged about 37 years,
- Both above R/o. Village Gurmuti, Tahsil Wadrafnagar, Distt. Surguja (CG)
3. State of Chhattisgarh through Collector, Surguja Ambikapur (CG)

---Respondents

For Appellants	: Shri Manoj Paranjpe and Shri Anurag Singh, Advocates
For Respondent No.1	: None present though served
For Respondent No.2	: Shri Sanjay Patel and Shri Hari Om Rai, Advocates
For Respondent No.3/State	: Shri Ravi Bhagat, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****14.01.2021.**

1. This second appeal preferred by the appellants/plaintiffs under Section 100 of CPC has been admitted for hearing on the following substantial question of law :-

“Whether the first appellate Court was justified in rejecting the application for condonation of delay holding that no sufficient cause has been shown by the plaintiffs for delay of 72 days in filing the appeal and thereby dismissing the appeal ?”

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

2. The plaintiffs filed a civil suit for declaration of title and for permanent injunction in respect of the land described in Schedule -B annexed with the plaint. The learned trial Court vide judgment and decree dated 30.10.2007, dismissed the suit of the plaintiffs, against which the plaintiffs preferred an appeal under Section 96 of the CPC before the first appellate court. Since the appeal was barred by limitation, application under Section 5 of the Limitation act supported with an affidavit for delay of 72 days was also filed stating that against the order of the dismissal of the suit, the plaintiffs preferred MA No.06/2008 under Order 43 Rule 1(U) of the CPC before the High Court and that has been dismissed as withdrawn on 08.5.2008. Thereafter appeal was preferred before the first appellate court on 24.8.2009 with a delay of 72 days.

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 holding that since MA No.06/2008 preferred by the plaintiffs before the High Court has been dismissed as withdrawn, application for condonation of delay has no force and consequently, dismissed the appeal vide judgment and decree dated 14.7.2010, against which this second appeal has been preferred by the appellants/plaintiffs.

4. Learned counsel for the appellants/plaintiffs, would submit that the first appellate Court is absolutely unjustified in not condoning the delay of 72 days as the plaintiffs are entitled for the benefit of Section 14 of the

Limitation Act, as such, the application for condonation of delay ought to have been allowed by the first appellate Court.

5. On the other hand, learned counsel for the respondents opposed the above arguments.

6. I have heard learned counsel for the parties, considered their submission and perused the record.

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.”

8. Similarly, the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy**² 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:-

1 (1987) 2 SCC 107

2 (1998) 7 SCC 123

“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 plaintiffs’ suit for declaration of title and for permanent injunction was dismissed against which plaintiffs filed an appeal along with an application for condonation of delay for condoning the delay of 72 days in filing the appeal offering an explanation that they filed MA before this Court which was dismissed as withdrawn on 08.5.2008. It is not disputed that against the judgment and decree of the

3 (2019) 6 SCC 387

trial Court, an appeal under Section 96 of CPC before the first appellate Court would lie and appeal under Order 43 Rule 1(U) of CPC would not lie, therefore, the appellants/plaintiffs were entitled for the benefit of Section 14 of the Limitation Act, as such, in the considered opinion of this Court, sufficient cause has been shown by the plaintiffs for the delay of 72 days in filing the appeal. Learned first appellate court has legally erred in taking a hyper-technical view of the matter and rejecting the application for condonation of delay and subsequently dismissing the appeal of the plaintiffs.

10. Consequently, the judgment and decree passed by the first appellate Court is hereby set aside and 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 two months from the date of appearance of the parties. Registry is directed to return the records to the first appellate Court forthwith. The parties/respondents will be noticed by special server.

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

Sd/-

(Sanjay K. Agrawal)

JUDGE