

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 228 of 2011**

Daya Shanker S/o. Chhkke Lal aged about 45 years, Caste Panika,
R/o. Village Murmur, PS Pendra Distt. Bilaspur (CG)

---- Appellant**Versus**

Jwala Prasad S/o. Devlal, aged about 50 years, R/o. Village Murmur,
PS Pendra, Distt. Bilaspur (CG)

---Respondent

For Appellant	: Ku. Meenu Banerjee, Advocate
For Respondent	: None present though represented

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****03.02.2021.**

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

“Whether the lower appellate Court is justified in affirming the judgment and decree of the trial Court by dismissing the appeal on the ground of limitation ?”

[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 permanent injunction in respect of the suit land bearing Survey No.121 and 122 area 0.37 and 0.22 acre situated at Village Murmur Tashil Pendra Raod. The learned trial Court vide judgment and decree dated 30.01.2009 decreed the suit in favour of

the plaintiff, against which the defendant preferred an appeal 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 75 days was also filed stating that due to illness, he could not file the appeal within 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 holding that no sufficient cause had been shown by the defendant for delay of 75 days in filing the appeal and no affidavit has been filed in support of his application for condonation of delay and consequently, dismissed the appeal vide judgment and decree dated 16.8.2010, against which this second appeal has been preferred by the appellant/defendant.

4. Learned counsel for the appellant/defendant, would submit that the first appellate Court is absolutely unjustified in not condoning the delay of 75 days as the defendant is 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. I have heard learned counsel for the appellant, considered her submission and perused the record with utmost circumspection.

6. 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

1(1987) 2 SCC 107

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.”

7. 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:-

“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.

2 (1998) 7 SCC 123

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.**³ to the facts of the case at hand, it is quite vivid that plaintiffs' suit for permanent injunction was decreed by the trial Court against which the defendant filed an appeal along with an application for condonation of delay of 75 days in filing the appeal offering an explanation that due to his illness he could not file the appeal within the time. There is no counter affidavit denying the reasons for delay in filing the application. The first appellate Court has incorrectly recorded a finding that no affidavit has been filed along with the application for condonation of delay as on careful perusal of the original record reveals that the appellant had filed affidavit in support of his application for condonation of delay which is available on record, as such, the delay in filing the appeal was explained by the appellant before the first appellate Court, therefore, the first appellate Court ought to have condoned the delay in filing the first appeal. Learned first appellate court has legally erred in taking a hyper-technical view of the matter and rejected the application for condonation of delay and subsequently dismissed the appeal of the defendant.

3 (2019) 6 SCC 387

9. Consequently, the judgment and decree passed by the first appellate Court is hereby set aside and the delay of 75 days 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 45 days from the date of appearance of the parties. Registry is directed to return the records to the first appellate Court forthwith. The parties/respondent will be noticed by special server.

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

Sd/-

(Sanjay K. Agrawal)

JUDGE