

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 149 of 2019**

- Virendra Kumar Shukla (Advocate) S/o Late Ramavatar Shukla, Aged About 69 Years R/o Tatibandh, Post Office Tatibandh , Tahsil And District Raipur Chhattisgarh. **---- Appellant**

Versus

- Rajendra Prasad Shukla S/o Late Ramavtar Shukla, Aged About 80 Years R/o Malviya Road, Tahsil And District Raipur Chhattisgarh Present R/o Village House No. 52- A, Amrapali Society, Panchpedi Naka, Dhamtari Road, Raipur, Chhattisgarh. **--- Respondent**

For Appellant:	:	Shri Pushpendra Kumar Patel appears along with Smt. N.K. Kashyap, Advocate.
For the Respondent:	:	Shri Varun Sharma, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**Order on board****19.01.2021**

1. Heard on I.A. No.01/2019, an application for condonation of delay of 450 days in filing this appeal.
2. Learned counsel for the Appellant submits that after passing of the impugned judgment and decree dated 12.09.2017, an application for obtaining the same was made on 12.02.2019 and in pursuance thereof, the certified copy was delivered on 19.02.2019 (though it appears to be delivered on 23.02.2019). It is submitted further that since, the Appellant was suffering from Parkinson disease since 31.08.2015 and till date his treatment is continued and, therefore, he was unable to perform his routine work. It is submitted further that after recovering to some extent from his said disease, the instant appeal has been preferred on 14.03.2019. It is, therefore, contended that the delay as occurred was not deliberate and deserves to be condoned in

order to provide the substantial justice to the parties.

3. On the other hand, learned counsel for the Respondent has opposed the same and contended that the reason as assigned in the application is fabricated and, in fact, the Appellant was not suffering from the said disease as alleged in the application. While furnishing certain order sheets of the judicial proceedings as initiated by him, it is submitted that the Appellant was continuously pursuing those judicial proceedings and has, therefore, taken a false plea in his application in order to get the condonation of delay of 450 days which, therefore, deserves to be rejected. In support, a reliance has been placed upon the decision rendered by the Supreme Court in the matter of **Maniben Devraj Shah Versus Municipal Corporation of Brihan Mumbai and Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others** reported in (2012) 5 SCC 157 and (2013) 12 SCC 649, respectively.
4. I have heard learned counsel for the parties and perused the entire relevant papers annexed along with this application carefully.
5. From perusal of the explanation offered in the application for condonation of delay, it appears that since the Appellant was suffering from Parkinson disease since 31.08.2015 and was therefore not able to file the appeal in time and this was the only reason assigned by him for condonation of delay in filing this appeal. It, however, appears from the order sheets commencing with effect from, 05.12.2017 upto 25.02.2019 in Revenue Case No. 81-A-6/2017-2018, furnished by Respondent in his reply, that the Appellant was continuously appearing in the said mutation proceedings. Not only this, an application was

made by him for its transfer on 14.03.2018 as evidenced by document-B furnished by the said Respondent in his reply. That apart, a civil suit, being C. S. No.279-A/2017 was instituted by him on 12.10.2017 against the Respondent/Rajendra Prasad Shukla immediately after passing of the impugned judgment and decree which was delivered on 12.09.2017. It appears further from the order sheet dated 23.02.2018 that a civil suit being C.S. No. 67-A/2018 was instituted by the Appellant before the 9th Civil Judge Class II, Raipur against one Smt. Ekta Shukla and others. All these material facts have been brought on record by the Respondent in order to show that a false plea has been taken by the Appellant herein.

6. Considering the aforesaid legal proceedings which reveal the facts specifically that the Appellant was continuously appearing before the said authorities much before filing of this appeal and was in a position to perform his routine work and, therefore, it cannot be said that because of his suffering from the said disease, he was not in a position to prefer this appeal in time. It, therefore, appears to be of his false and concocted plea in order to get the condonation of delay in filing this appeal. That apart, no explanation has been offered as to why an application for obtaining the certified copy was made on 12.02.2019 after passing of more than one and half year of the impugned judgment and decree.
7. At this juncture, the principles laid down by the Supreme Court in the matter **Balwant Singh v. Jagdish Singh** reported in (2010) 8 SCC 685 are to be seen, wherein, at paragraphs 25 and 26, it has been held as under:-

"25. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

8. Yet in the matter of Maniben Devraj Singh Versus Municipal Corpn.of Brihan

Mumbai (supra), it has been observed 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."

9. While, reiterating and relying upon the aforesaid principles, the Supreme Court in the matter of Esha Bhattacharjee v. Managing Committee of

Raghunathpur Nafar Academy and others (supra) has held at paragraphs 21.9 (ix) and 21.10(x) 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 or 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.

10. In the light of the aforesaid principles coupled with the participation of the Appellant in the said legal proceedings as observed and pointed out by the Respondent in his reply, it is evident that a false and concocted plea has been taken by the Appellant in order to get the discretionary relief of this Court for condonation of inordinate delay of 450 days in filing this appeal.
11. In view of above, the application is rejected and, consequently, the appeal is dismissed.

No order as to costs.

Sd/-
(Sanjay S.Agrawal)
JUDGE

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