NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 451 of 2013

- Rameshwar S/o Lachhuman Aged About 67 Years, R/o Village Chunapathra, Tahsil And P.S. Ramanujganj Distt. Surguja C.G.

---- Petitioner

Versus

1. Smt. Sukhman Devi W/o Babai
2. Subhago W/o Basdev
3. Basdev S/o Parsan
4. Gauri Shankar S/o Babai
5. Mangru S/o Dukhan
6. Ramlakhan S/o Mangru
   (respondents No.1 to 6 are r/o Village Chunapathra, Tahsil And Police Station - Ramanujganj, District Surguja C.G.)
7. Upper Collector Ramanujganj Tahsil And P.S. Ramanujganj Distt. Surguja C.G.
8. Additional Commissioner Division Ambikapur, Distt. Surguja C.G.
9. Board Of Revenue Bilaspur District Bilaspur C.G.

---- Respondents

For Petitioner	:	Mr. Anand Shukla, Advocate.
For State/Respondents No.7, 8 & 9	:	Mr. Alok Nigam, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

21/06/2021

1. This petition under Article 227 Constitution of India has been brought being aggrieved by the order dated 29.09.2012 passed by Revenue Board, Bilaspur i.e. respondent No.9, dismissing the Second Appeal filed by the petitioner on the ground of delay.

2. Learned counsel for the petitioner submits that the impugned order is illegal and suffers from material irregularities and is liable to be set

aside. The petitioner had to put fourth bona-fide reasons for the delay but the same was not at all considered.

3. Placing reliance on the judgment of Supreme Court in the case of ***Collector Land Acquisition***, ***Anant Nag & Anr. Vs. MST Katiji & Ors.*** reported in 1987 AIR 1353, ***Vedabai Alias Vaijayantabai Baburao Patil Vs. Shantaram Baburao Patil & Ors.*** reported in AIR 2001 Supreme Court 2582 and the judgment of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*** reported in (2013) 12 SCC 649, it is further submitted that it has been clearly held by the Supreme Court that liberal, pragmatic, justice oriented and non-pedantic approach, while dealing with the application of condonation of delay, has to be taken. It is also held that Courts are not supposed to legalize injustice, but are obliged to remove injustice. Therefore, it is prayed that the present petition is fit to be allowed and the petitioner may be granted relief.

4. Learned State counsel appearing for respondent No.7, 8 and 9 opposes the submissions and submits that no error has been committed by the learned Board of Revenue. Therefore, the petition may be dismissed.

5. The private respondent in this care are not represented, although, the notices have been served upon them.

6. Heard learned counsel for the parties and perused the documents present.

7. Considered on the submissions, the petitioner had filed Second Appeal before respondent No.9 after a delay of 115 days. It has been held by the respondent No.9 that the petitioner has not explained the reason for delay of everyday. This does not appear to be a proper approach because explaining delay of each and every day is a proverbial

expression. Section 5 of Limitation Act, 1963 provides that the appellant or the applicant has to satisfy the Court that he had sufficient cause for not preferring the appeal or making the application within such limitation.

8. On perusal of the impugned order, it is found that the cause of delay as is mentioned that the date on which the order was passed by the Additional Commissioner, was that the petitioner was not present in the Court. He received this information from his counsel on 01.03.2011, therefore, the petition could not be filed in time. The reason that is mentioned in the impugned order was required to be considered but the Board, by only stressing upon explanation for delay of each and every day, the application for condonation of delay has been rejected. Hence, it appears that the respondent No.9 had jurisdiction and authority to consider and decide the application but it has simply refused to consider on the ground of delay and this rejection order has been passed.

9. According to the settled view of the Supreme Court, which is mentioned hereinabove, the respondent No.9 was required to take a liberal approach but by not doing so, the error has been committed. Hence, on the basis of these findings, this petition is allowed. The impugned order is set aside. The application for condonation of delay filed by the petitioner is hereby allowed. Respondent No.9 that is the Board of Revenue is directed to consider on the Second Appeal filed by the petitioner on merits in accordance with law and pass appropriate orders.

10. Accordingly, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Monika