

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.238 of 2010

Buddhu, S/o Bodhwa, Caste-Satnami, aged about 65 years, R/o Village-Bija, Tahsil-Takhatpur, District-Bilaspur (CG)

(Plaintiff)
---- Appellant

Versus

1. Daya Bai (died) through LR's
 - 1a. Bhagau, son of late Chamaru, mother of late Daya Bai (respondent No.1), aged about 53 years,
 - 1b. Nandu son of late Chamaru, mother of late Daya Bai (respondent No.1), aged about 51 years,
 - 1c. Bhagwantin daughter of late Chamaru, mother of late Daya Bai (respondent No.1), aged about 49 years,

All are caste Satnami, resident of Satnamipara, Belgahana, Police Chowki Belgahana, Tahsil Kota, District Bilaspur (CG)

 - 1d. Santra Bai (died) through LR's
 - 1d(1) Shyam Lal Kurre, son of Firanga Kurre, aged about 52 years,
 - 1d(2) Shesh Kurre, son of Shyam Lal Kurre, aged about 24 years,
 - 1d(3) Sunil Kurre, son of Shyam Lal Kurre, aged about 30 years,

All are resident of Village Pipar Tarai, Ganiyari, District Bilaspur, Chhattisgarh
 2. Hinchchha Ram, S/o Chamru, Caste-Satnami, aged about 57 years, R/o Village-Bija, Tahsil-Takhatpur, District-Bilaspur (CG)
 3. State of Chhattisgarh, Through the Collector Bilaspur (CG)
- (Defendants)
---- Respondents

For Appellant: Mr.Lavkush Sahu, Advocate

For Respondents No.1(d) 1 to 3:

Mr.B.M.Rao and Mr.Basant Kaiwartya, Advocates

For Respondent No.3/State: -

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

23/02/2021

1. The substantial question of law involved, formulated and to be answered in this plaintiff's second appeal is as under: -

“Whether the first appellate Court was justified in dismissing the appeal as barred by limitation by recording a finding which is perverse and contrary to the record ?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court.)

2. The plaintiff's suit for declaration of title and permanent injunction was dismissed by the trial Court on 31.10.2008 against which he preferred appeal before the first appellate Court on 18.2.2009 with a delay of 70 days. The first appellate Court rejected the application for condonation of delay and also dismissed the appeal as barred by limitation against which this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff in which one substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
3. Mr.Lavkush Sahu, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in not considering the ground shown in the application for condonation as the plaintiff is saint (sadhu) and used to travel across the country for religious purpose and his application was supported by affidavit, though it was replied, but no counter-affidavit was filed controverting the sufficient cause shown in the application, therefore, the condonation application ought to have been allowed by the first appellate Court and delay could have been condoned, as such, the second appeal be allowed and the judgment and decree of the first appellate Court deserves to be set-aside.
4. On the other hand, Mr.B.M.Rao, learned counsel for respondents No.1(d)1 to 3, would support the impugned judgment and decree and submit that no sufficient cause has been shown for delay in filing the appeal and as such, the first appellate Court has rightly rejected the application and dismissed the appeal.
5. I have heard learned counsel for the parties and considered their rival

submissions and also went through the record with utmost circumspection.

6. Admittedly, the first appeal was filed on 18.2.2009 with a delay of 70 days, but the appellant / plaintiff filed application for condonation of delay supported by affidavit as his suit was dismissed on 31.10.2008 and he preferred first appeal with a delay of 70 days supported by application for condonation of delay. The reason assigned is that he is saint (sadhu) and used to travel across the country for religious purpose, therefore, he could not come to know about the judgment and decree of the trial Court and therefore could not prefer appeal right in time. He filed affidavit in support of application for condonation of delay, which was not controverted by the defendants by filing counter-affidavit. The reason assigned by the plaintiff appears to be sufficient as having suffered the decree the plaintiff would not get advantage by filing appeal with a delay of 70 days particularly when he has lost the suit and he has been non-suited by the trial Court.
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

1 (1987) 2 SCC 107

scuttles a decision on merits.”

8. Similarly, in the matter of N. Balakrishnan v. M. Krishnamurthy² it has been held by the Supreme Court that “sufficient cause” has to be construed liberally especially when the delay is not deliberate and *mala fide*. Relevant portion of the report reads as under :

“11. Rules 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. 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 Kumar*³ and *State of W.B. v. Administrator, Howrah Municipality*⁴.”

9. Reverting to the facts of the present case in light of the aforesaid principle of law laid down by their Lordships of the Supreme Court, it appears that first appeal has been dismissed as barred by limitation though sufficient cause has been shown for delay, as the plaintiff / appellant could not prefer appeal well in time. The first appeal ought to have been decided on merits by the first appellate Court.

2 (1998) 7 SCC 123

3 AIR 1969 SC 575

4 (1972) 1 SCC 366

10. As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by the first appellate Court is set aside and delay of 70 days in filing appeal is condoned. The matter is remitted to the first appellate Court to consider and dispose of the appeal on merits within two months from the date of receipt of a copy of this judgment, as the first appeal was preferred on 18.2.2009.
11. The substantial question of law is answered against the defendants and in favour of the plaintiff. The second appeal is allowed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-