



HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal No.148 of 2019

1. Virendra Kumar Shukla S/o Shri Ram Awatar Shukla Aged About 69 Years Advocate, R/o Tatibandh, Post Office Tatibandh, Tahsil and District- Raipur, Chhattisgarh.

---Appellant(s)

Versus

1. Rajendra Shankar Shukla S/o Late Ram Awatar Shukla Resident Of Malviya Road, Tahsil And District- Raipur, Chhattisgarh, Presently Resided At- House No. 52/a, Amrapali Society, Panchpedi Naka, Dhamtari Road, Raipur, Chhattisgarh.
2. Nagendra Shankar Shukla (Since Deceased On 07.09.2018) Through His Legal Heirs
 - 2.(A) Smt. Tapeshwari Shukla Wd/o Late Nagendra Shankar Shukla Aged About 75 Years, resident of Unchagaon Sani, Tehsil Purwa, District Unnav (UP).
 - 2.(B) Rajesh Kumar Shukla S/o Late Nagendra Shankar Shukla Aged About 40 Years resident of Unchagaon Sani, Tehsil Purwa, District Unnav (UP).
 - 2.(C) Dependra Kumar Shukla S/o Late Nagendra Shankar Shukla Aged About 37 Years resident of Unchagaon Sani, Tehsil Purwa, District Unnav (UP).
 - 2.(D) Vimal Kumar Shukla S/o Late Nagendra Shankar Shukla Aged About 34 Years resident of Unchagaon Sani, Tehsil Purwa, District Unnav (UP).
 - 2.(E) Anita Tiwari D/o Late Nagendra Shankar Shukla Aged About 29 Years resident of Unchagaon Sani, Tehsil Purwa, District Unnav (UP).
 - 2.(F) Preety Tiwari W/o Shri Deep Tiwari Aged About 26 Years resident of Unchagaon Sani, Tehsil Purwa, District Unnav (UP).

Respondent(s)

For Appellant	:	Shri Pushpendra Kumar Patel, Advocate.
For Respondents	:	Shri Varun Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

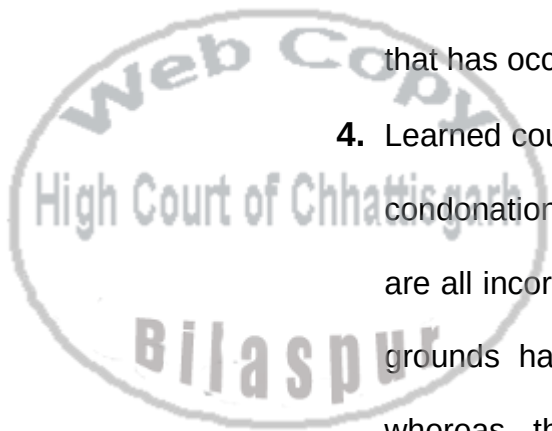
Order on Board

28.09.2022

1. Today the matter was taken up for hearing for consideration on IA No.1, which is an application for condonation of delay in filing the appeal. The present First Appeal has been filed by the plaintiff with a delay of 450 days. The judgment and decree under challenge in the present appeal is dated 12.09.2017 passed by the IInd Additional District Judge, Raipur in Civil Suit No.129-A/2011.

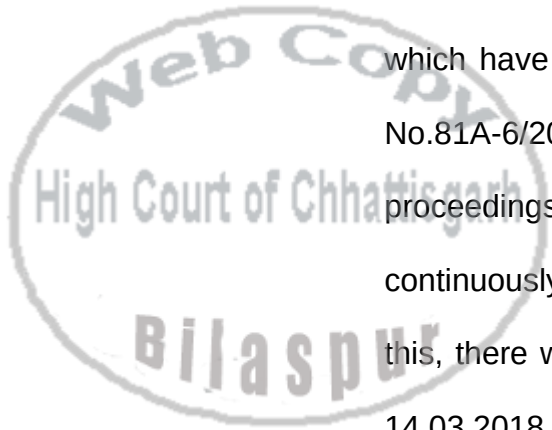


2. According to the appellant immediately on his coming to know about the judgment and decree, he had made an application for obtaining certified copy of the judgment on 12.02.2019. The said application was processed and certified copy was finally delivered on 19.02.2019.
3. The contention of the appellant is that he was suffering from certain medical ailment like Parkinson disease etc. since 31.08.2015 and he was undergoing continuous treatment which prevented him from discharging his normal duties and for the said reason the appeal could not be filed promptly. It is further contention of the appellant that soon after making some recovery so far as his medical ailment is concerned, he had preferred the instant appeal on 14.03.2019 . The appellant referring to his health condition has prayed for condonation of delay stating that the delay that has occurred was neither deliberate nor with any malafide intention.
4. Learned counsel for the respondents however opposing the application for condonation of delay contends that the grounds raised in the application are all incorrect facts. It is further contention of the respondents that those grounds have been raised only to attract the sympathy of the court, whereas, those are all far from reality. It is further contention of the respondent that infact the appellant was not suffering from any serious ailments which could have prevented him from discharging his normal duties. According to the respondents, on one hand in the present appeal the appellant claims himself to be indisposed during the period which prevented him from filing of the present appeal whereas, at the same time the appellant himself had been pursuing various other judicial proceedings at different courts. In support of his contentions, the respondents have referred to certain order sheets of the judicial proceedings wherein it was clearly reflecting the participation of the appellant.





5. Referring to all these things, the counsel for the respondents stress hard for rejecting IA No.1 on the ground that the plea for condonation of delay taken is false and incorrect and the delay of 450 days therefore should not be condoned and the application should be rejected.
6. It is the further contention of the counsel for the respondents that even otherwise the appellant have not been able to provide satisfactory and plausible explanation for the huge delay of 450 days except for a general statement made in his application in respect of his medical condition.
7. Having heard the contentions put forth on either side and on perusal of records, what is evidently clear is that the only ground that the appellant has stressed seeking for condonation of delay was the appellant suffering from the Parkinson disease since 2015 onward. From the order sheets which have been brought before this court particularly in Revenue Case No.81A-6/2017-18 it clearly reflects that the commencement of the proceedings from 05.12.2017 uptill 25.02.2019 the appellant had been continuously appearing in the said mutation proceedings. In addition to this, there was another application moved by him seeking for transfer on 14.03.2018 as would be evident from document-B enclosed along with the reply filed by the respondents to the application. In addition, there was yet another Civil Suit No.279-A/2017 instituted by the appellant on 12.10.2017 against the respondents herein. The said institution of the Civil Suit was the time immediately preceding the judgment and decree under challenge in the present First Appeal i.e. judgment and decree dated 12.09.2017. It has been further informed that there was yet another Civil Suit i.e. Civil Suit No.67-A/2018 which was instituted by the appellant before the 9th Civil Judge, Class-II, Raipur, against one Smt. Ekta Shukla and Others. An order sheet dated 23.02.2018 of the said Civil Suit also has been produced before this court.

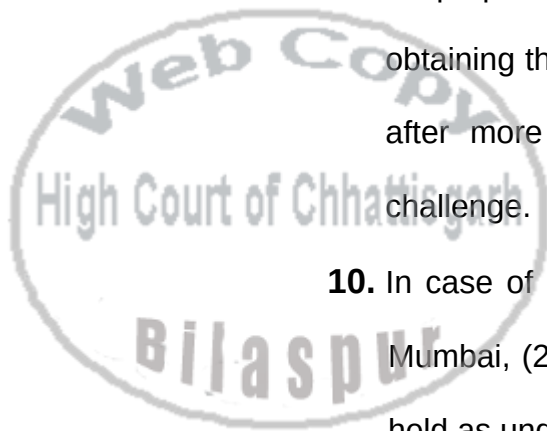




- 8.** From the plain perusal of the aforestated records which are not in dispute it clearly reflects that the appellant infact as such was not indisposed or was having any serious medical ailment which prevented him from moving out of his house or even unable to contact his Lawyer for preferring the present appeal. The grounds and reasons mentioned in IA No.1 therefore does not seem to be proper, legal and justified. The grounds and reasons raised by the appellant in his application for condonation of delay therefore stands falsified and has been raised only for the sake of getting the sympathy of the court.
- 9.** Apart from the aforesaid fact what is also surprising is that pursuant to judgment and decree under challenge having been passed on 12.09.2017, no proper explanation has been provided as to why the application for obtaining the certified copy was moved for the first time on 12.02.2019 i.e. after more than 1 and ½ years of the judgment and decree under challenge.
- 10.** In case of Maniben Devraj Shah Versus Muncipal Corporation of Brihan Mumbai, (2012) 5 SCC 157 the Supreme Court in paragraphs 23 and 24 held 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.”





11. The aforesaid principal have been further reiterated by the Supreme Court in Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others, 2013) 12 SCC 649 wherein paragraphs 21.9(ix) and 21.10(x) it has been held 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.”

12. In yet another case the Supreme Court in Balwant Singh Vs. Jagdish Singh reported in (2010) 8 SCC 685 in paragraphs 25 and 26 has observed 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.”

13. Given the aforesaid legal settled position and also taking into consideration the factual matrix of the case which is reflected from the contents of the preceding paragraphs, this court is of the firm view that the





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appellant has not been able to make out a strong case for grant of condonation of the inordinate delay of 450 days in filing of the appeal. Satisfactory and plausible explanation have not been provided. The only reason which has been assigned stands disproved from the series of litigation which the appellants himself has been pursuing before the different courts during the said period itself.

14. In view of the same, IA No.1 seeking condonation of delay stands rejected.

As a consequence, the appeal also stands rejected.

Sd/-
(P. Sam Koshy)
Judge

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