

(2025) 06 JH CK 0856
In the Jharkhand High Court
Case No : S.A. No. 41 Of 2024

Sugandha Singh

APPELLANT

Vs

Dinesh Prasad Singh

RESPONDENT

Date of Decision : 12-06-2025

Acts Referred:

Limitation Act, 1963 — Section 5
Code of Civil Procedure, 1908 — Order 5 Rule 12, Order 5 Rule 15, Order 5 Rule 17,
Order 5 Rule 20, Order 41 Rule 11

Citation : (2025) 06 JH CK 0856

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Amit Kumar Das, Shubham Mishra, Kanishka Deo, Sumeet Gadodia,
Ritesh Kumar Gupta, Prakhar Harit, K. Hari

Final Decision : Disposed Of

Judgement

1. Heard Mr. Amit Kumar Das, learned counsel appearing for the appellants and Mr. Sumeet Gadodia, learned counsel appearing for the respondent.

2. This second appeal has been filed on 08.04.2024 and it is barred by 525 days.

3. Mr. Amit Kumar Das, learned counsel appearing for the appellants submits that for condonation of delay of 525 days, I.A. No.10652 of 2024 has been filed. He submits that the appellants have filed the instant second appeal against the judgment and decree dated 23.12.2022 (decree signed on 05.01.2023) passed by the learned Principal District Judge, Garhwa in Civil Appeal No.05 of 2020, whereby, the appeal filed by the respondent has been allowed and the judgment and decree dated 04.02.2016 (decree signed on 23. 02.2016) passed by the learned Civil Judge (Sr. Division) No.1, Garhwa in Title Suit No.6 of 2014 has been reversed. He then submits that the judgment has been passed ex-parte against the appellants by the learned first appellate court without proper service of notice upon them. However, when it has come to the knowledge of the appellants, they enquired about the matter decided by the learned first appellate

court and, thereafter contacted their lawyer and obtained certified copy of the order on 12.04.2024 and after receipt of the certified copy of the order, the same was discussed with the local counsel, who advised the appellants to move before this Court. He submits that in this background, the delay has occurred. He puts more emphasis on non-service of notice upon the appellants herein. He submits that the courts are liberal in condoning the delay if sufficient cause is shown. To buttress this argument, he relied upon the judgment passed in the case of N. Balakrishnan v. M. Krishnamurthy, reported in (1998) 7 SCC 123. Paragraphs 10, 11 and 12 of the said judgment read as under:

"10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

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 put 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.

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*,"

Relying on the above judgment, he submits that the case of the appellants is fully covered as notice has not been served upon the appellants and in view of that, the delay may kindly be condoned.

4. Mr. Das, learned counsel appearing for the appellants further submits that it is a case of reversal and the appellants are having good case of admitting the present second appeal. He further relied upon the judgment passed in the case

of Mool Chandra v. Union of India, reported in 2024 0 Supreme (SC) 636. Paragraphs 22 and 23 of the said judgment read as under:

"22. If negligence can be attributed to the appellant, then necessarily the delay which has not been condoned by the Tribunal and affirmed by the High Court deserves to be accepted. However, if no fault can be laid at the doors of the appellant and cause shown is sufficient then we are of the considered view that both the Tribunal and the High Court were in error in not adopting a liberal approach or justice oriented approach to condone the delay. This Court in Municipal Council, Ahmednagar and Anr. Vs. Shah Hyder Beig and Ors. 2000 (2) SCC 48 has held:

"6. Incidentally this point of delay and laches was also raised before the High Court and on this score the High Court relying upon the decision in Abhyankar case (N.L. Abhyankar v. Union of India [(1995) 1 Mah LJ 503]) observed that it is not an inflexible rule that whenever there is delay, the Court must and necessarily refuse to entertain the petition filed after a period of three years or more which is the normal period of limitation for filing a suit. The Bombay High Court in Abhyankar case [(1995) 1 Mah LJ 503] stated that the question is one of discretion to be followed in the facts and circumstances of each case and further stated:

"The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay."

23. Applying the aforesaid principles which we are in complete agreement to the facts on hand and test the same it would not detain us for too long to set aside the impugned orders, in as much as the delay of 425 days in filing fresh O.A. No.2066 of 2020 has been succinctly explained by the appellant before the Tribunal, namely, it has been contended that there was no intimation of withdrawal of the earlier OA by his counsel and the order of withdrawal dated 10.08.2018 does not reflect that such withdrawal was based on any memo duly signed by the appellant. Further, The High Court has proceeded to confirm the order of the Tribunal on the footing that penalty imposed on appellant is only a minor penalty namely withholding of one increment without cumulative effect, by completely ignoring the fact that in the earlier round of litigation it had been clearly held that punishment of dismissal imposed on the appellant was totally disproportionate to the alleged act."

5. Mr. Das, learned counsel for the appellants also submits that the appellants are purchaser of a piece of land by registered sale-deed and after six years of purchase, the suit was instituted by the respondent only on the ground that consideration amount was not paid, however, in the deed it has been admitted

that the consideration amount has been paid. He submits that the learned appellate court in absence of proper notice, has been pleased to allow the appeal ex-parte against the appellants herein.

6. Per contra, Mr. Sumeet Gadodia, learned counsel appearing for the sole respondent opposed the prayer and submits that there is huge delay and day-to-day explanations are not there and in view of that, the delay may not be condoned. According to him, notice was already served and even paper publication was also made. By way of referring paragraph 4 of the appellate court's judgment, Mr. Gadodia submits that in that paragraph the court has exclusively dealt with the mode of notice and the learned first appellate court has noted in clear terms that the notices have been issued and even paper publication has been made and in spite of that the appellants had not appeared before the learned first appellate court. He submits that even before the learned trial court, the appellants had not appeared, however, the suit has been dismissed by the learned trial court.

7. In view of the above submissions of the learned counsel for the parties, it is an admitted position that it has not been denied by the respondent herein that the appellants have purchased a piece of land by way of registered sale-deed and after six years of purchase, the said suit was instituted by the respondent on the ground that consideration amount was not paid and the suit was dismissed in spite of the fact that appellants herein had not appeared in the suit. Thereafter, the appeal was preferred by the respondent herein, which has been allowed ex-parte against the appellants herein.

8. From paragraph 4 of the judgment of the learned first appellate court, it is not clear as to whether notice was sent to the present and correct address of the appellants herein. Even it is not noted in the said judgment whether service report of notice was received or not, however, the learned appellate court has been pleased to pass the order of paper publication. In the order of the learned first appellate court, there is no whisper regarding the satisfaction of the learned court about non-service of notice upon the appellants herein to the effect that they are avoiding service of notice despite repeated efforts made by the court. Before dealing with application under Order V Rule 20 of C.P.C., it was the duty of the learned trial court or first appellate court to record its satisfaction that the appellants are avoiding service of notice. The learned court did not bother to record the statement of process server who had taken the summons for service on the appellants on the address shown in the plaint.

9. The Hon'ble Supreme Court in the case of Smt. Yallawwa v. Smt. Shantavva, reported in AIR 1997 SC 35 held that the trial court could not have almost automatically granted the application for substituted service without taking steps for serving the respondent by ordinary procedure as laid down by Order V Rules 12, 15 and 17 of the C.P.C. It must be kept in view that substituted service has to be restored as the last resort when the defendant cannot be served in the ordinary way and the court is satisfied that there is reason to believe that the

defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. Evidence has also not been led on the issue of service of notice.

10. The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay, but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. What constitutes sufficient cause cannot be laid down by hard and fast rules. This aspect of the matter has been considered by the Hon'ble Supreme Court in two of the judgments relied by the learned counsel for the appellants.

11. The length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. There is no doubt that the limitation is said to be on public policy, however, rules of limitation are not meant to destroy the right of parties. The only purpose of limitation is to see that the parties do not resort to dilatory tactics, but seek their remedy promptly. A court knows that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. Presumption cannot be drawn in every case that delay in approaching the court was deliberate. Further, the primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice.

12. In light of the above discussions and further considering the point of notice, the Court finds that sufficient cause is made out to condone the delay and, as such, the delay of 525 days in filing the present second appeal is, hereby, condoned.

13. Accordingly, I.A. No.10652 of 2024 is disposed of.

14. Let this matter appear under Order XLI Rule 11 of the CPC.