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**(2021) 02 CHH CK 0010**

**Chhattisgarh High Court**

**Case No:** Writ Petition (C) No. 2096 Of 2016

Bena Bai And Ors

APPELLANT

Vs

. Leelam Chand Jain And Ors

RESPONDENT

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**Date of Decision:** Feb. 4, 2021

**Acts Referred:**

- Chhattisgarh Land Revenue Code, 1959 - Section 44(1)
- Code Of Civil Procedure 1908 - Order 6 Rule 17, Order 41 Rule 27

**Hon'ble Judges:** Goutam Bhaduri, J

**Bench:** Single Bench

**Advocate:** Vaibhav Tiwari, Badruddin Khan, Vivek Verma

**Final Decision:** Allowed

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### **Judgement**

Goutam Bhaduri, J

1. Heard.

2. Challenge in this petition is to the order dated 27.04.2016 passed by the Board of Revenue, Bilaspur, whereby the revision filed by the petitioner has been dismissed by upholding the order of the Commissioner, Durg Division, Durg dated 20.11.2014 (Annexure P-6). By such order in revision, the order of the Commissioner was affirmed to hold that appeal was barred by time.

3. Learned counsel for the petitioners No. 1 to 6 would submit that the petitioners were joint owners/co-sharers of certain land bearing plot No.27/1

recorded in Sheet No. 29 D, they were the lessee of the said plot. The said land was held in joint ownership and few of the co-sharers had sold the

land on 25.05.2011 by three separate sale deeds in favour of the respondents. He would further submit that on the basis of said sale deed the Nazul

Officer by order dated 05.12.2011 (Annexure P-2) mutated the name of the respondents without individual notice to the present petitioners who were the co-sharer. The said order was passed on 05.12.2011 (Annexure P-2). He would further submit that the said order was subject of challenge before the Additional Collector under Section 44 (1) of the C.G. Land Revenue Code, 1959 (for short 'the Code, 1959') along with an application under Section 5 of the Limitation Act to condone the delay. It is further contended that the existence of the said order came into knowledge of the petitioners as late as when in a proceeding in Second Appeal before the High Court, certain documents were filed and the information of purchase of subject land was communicated to the petitioners through their counsel on 22.08.2013. Thereafter, the petitioners applied for the certified copy of the order on 26.09.2013 which was received on 03.10.2013 and eventually the appeal was filed on 05.10.2013. Therefore, from the date of knowledge within the period of limitation, immediately the appeal was preferred. The appellate Court by its order dated 31.05.2014 (Annexure P-5) condoned the delay and remitted back the case to the Nazul Officer for fresh adjudication. He would further submit that the said order was challenged by the purchaser/respondents herein before the Commissioner and the Commissioner by its order dated 20.11.2014 (Annexure P-6) has set aside the order of the Additional Collector whereby the delay was condoned. The said order was further subject of challenge before the Board of Revenue and the Board of Revenue by its order dated 27.04.2016 (Annexure P-1) has affirmed the order of the Commissioner.

iv. He would further submit that the finding recorded by the Additional Collector would show that the petitioners were not noticed about the date of order as it bears only signature of Tarachand Jain, the purchaser. Therefore, when the fact of purchase came to notice of petitioners incidentally proceeding in a Second Appeal the measures to file appeal was taken. Therefore, it cannot be presumed that the petitioners have the knowledge unless it was communicated by the counsel. He would further submit that under the circumstances, such finding of fact on the vague ground by the Commissioner is void ab initio and cannot be acted upon and the order which is affirmed by the Board of Revenue accordingly is required to be set

aside. He placed his reliance in the case of Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others {(2013) 12

SCC 649} and would submit that applying the principles as laid down by the Supreme Court, the mutation proceedings are required to be heard again

by giving opportunity of hearing to the petitioners.

5. Learned counsel for petitioner No.7 would submit that he has sold the property and he has been made a petitioner, whereas he should have been

arrayed as respondent and he supports the order of the Board of Revenue.

6. Learned counsel for the respondents would submit that the order of the Commissioner would show that in a proceeding in second appeal, wherein

the petitioners were also party, on 21.02.2012 an application under Order 41 Rule 27 CPC was moved, wherein the copy of the sale deed dated

25.05.2011 was placed. Along with the said application an application under Order 6 Rule 17 CPC was also filed, which contains the pleading about

the mutation and the High Court while hearing the application, fixed the case with an observation that such interlocutory application would be decided

during the final arguments. He would further submit that in view of such fact, the petitioners were aware of the fact about the mutation proceedings

and consequently the subsequent stand which has been taken by them to condone the delay is an after thought. He placed his reliance in the case of

Lanka Venkateswarlu (DEAD) BY LRS. Versus State of Andhra Pradesh and others {(2011) 4 SCC 363}.

7. I have heard learned counsel for the parties and perused the documents. No reply has been filed by the respondents.

8. Against the mutation order dated 05.12.2011 (Annexure P-2), the appeal was filed by the petitioners before the Collector under Section 44 (1) of

the C.G. Land Revenue Code, 1959. The Additional Collector condoned the delay by its order dated 31.05.2014 (Annexure P-5). The Additional

Collector observed that after perusal of the record of the lower Court, on date of order on 05.12.2011, the order-sheet only contains the signature of

one party i.e. Tarachand Jain, the purchaser. Therefore, the presumption was drawn that the petitioner do not have any knowledge about the date of

order. Subsequently, as and when it came to the notice of the petitioners, the appeal was filed with condonation of delay and subsequently, the delay

was condoned. Against such order, the respondents preferred a revision before the Commissioner and the Commissioner by its order dated 20.11.2014

(Annexure P-6) set aside the order of the Collector, whereby the appeal was held to be barred by time. Perusal of the said order would show that the

Commissioner was influenced by the fact that in a second appeal bearing S.A. No.77/2012 an application was filed under Order 6 Rule 17 CPC and

another application under Order 41 Rule 27 CPC which contains the fact of sale and pleading about mutation of name. In such proceeding the sale

deed dated 25.05.2011 was produced by the respondents. Thereafter certain dates of the High Court have been reflected to draw an inference that

after the disclosure of dates of sale & mutation proceedings, the petitioners were dormant to challenge the order of mutation. The fact that the order

which finds a reference of sale deed dated 25.05.2011 do not ipso facto take into sweep that the mutation has been carried out and pleading even if

contained the disclosure of mutation order, it was not adjudicated by Court at such point of time. The appeal was adjourned with an observation that

interlocutory application would be heard at the time of final hearing. The fact that the finding which was recorded by the Additional Collector that the

date of order dated 05.12.2011, the order-sheet do not contain the signature of either of the parties, has not been discussed or rebutted which is most

material and pertinent to count the limitation. Therefore, it would be too technical to draw an inference that since interlocutory order contained the

copy of sale deed and pleading of mutation, the petitioners had knowledge about the date. The Court cannot ignore the procedure as takes place in

High Court that parties are represented by the lawyers and unlike lower Court in date of hearing the parties are present on each date. So under

normal circumstances if any interlocutory application is filed by any party to proceed and the same is listed to be decided at the time of final hearing,

the concerned opposite party cannot be held responsible to draw an inference of knowledge about the contents of particular application. There may be

instances that the counsel may not have informed those facts to its client. Therefore, to hold that the contents of interlocutory application was in the

knowledge of particular opposite party would be a too technical approach. In appropriate cases it may defeat imparting justice on merits.

9 The Supreme Court in the case of Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others {(2013) 12 SCC

649} in respect of the condonation of delay has observed that there is a distinction between inordinate delay and a delay of short duration of few days

and former doctrine of prejudice is attracted and the Court should be liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an

application for condonation of delay. The Courts are not supposed to legalise injustice but are obliged to remove injustice. The Supreme Court in paras

21 & 22 elaborated the reasons, which are reproduced hereinbelow:-

21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1 (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the

courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these

terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note

of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are

required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted

whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

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 of 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.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xxii) To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

10. In the instant case, applying the aforesaid principles by drawing a presumption by adopting a too technical approach would amount to suppress the justice. The fact that on the date of order, it is not known to the parties except the purchaser is of much significance and it will hold the sway in favour of the petitioner and in view of the facts & circumstances, as emerged, no negligence can be attributed to the petitioners. Consequently, applying the aforesaid principle as laid down by the Supreme Court, the petition is allowed. Consequently, the order dated 27.04.2016 (Annexure P-1) is set aside and the order dated 31.05.2014 (Annexure P-5) is restored. No order as to costs.