Ram Nath Sao @ Ram Nath Sahu And Others vs Gobardhan Sao And Others on 27 February, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1201, 2002 AIR SCW 978, 2002 AIR - JHAR. H. C. R. 426, (2002) 2 JT 349 (SC), (2002) 2 ALLMR 588 (SC), (2002) 2 MARRILJ 315, 2002 (2) SLT 240, (2006) 1 JCR 93 (SC), 2002 (1) ALL CJ 367, 2002 (4) SRJ 51, 2002 (2) JT 349, (2003) BANKJ 75, 2002 (3) COM LJ 274 SC, 2002 (2) ALL MR 588, 2002 (2) SCALE 334, 2002 (3) SCC 195, 2002 SCFBRC 440, 2002 ALL CJ 1 367, 2002 (1) BLJR 794, 2002 (2) MARR LJ 315, (2003) ILR (KANT) (1) 514, (2002) 2 PUN LR 648, (2002) 1 UC 718, (2002) 1 ALL RENTCAS 479, (2002) 2 CIVLJ 256, (2002) 1 CURCC 242, (2002) 2 MAD LJ 85, (2002) 3 MAD LW 417, (2002) 3 MAHLR 173, (2002) REVDEC 556, (2002) 2 SCJ 195, (2002) 2 SUPREME 143, (2002) 2 RECCIVR 337, (2002) 2 ICC 1, (2002) 2 SCALE 334, (2002) WLC(SC)CVL 331, (2002) 3 JLJR 15, (2002) 48 ALL LR 101, (2002) 3 BLJ 231, (2002) 3 PAT LJR 247

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Bench: M.B. Shah, B.N. Agrawal

CASE NO.:
Appeal (civil) 1704 of 2002

PETITIONER:
RAM NATH SAO @ RAM NATH SAHU AND OTHERS

Vs.

RESPONDENT:
GOBARDHAN SAO AND OTHERS

DATE OF JUDGMENT: 27/02/2002

BENCH:
M.B. Shah & B.N. Agrawal

JUDGMENT:

B.N.AGRAWAL, J.

Leave granted.

Order impugned in this appeal has been passed by a Division Bench of the Jharkhand High Court in Letters Patent Appeal upholding order passed by learned Single Judge whereby regular First Appeal filed by the defendants against decree passed in a partition suit involving approximately 116 acres of land allowing claim of the plaintiffs has been disposed of holding that the entire appeal has become incompetent as during the pendency of the appeal, appellant No.2-Kashinath Sao(defendant No. 2), appellant No.3-Buchua Devi (defendant No.3), appellant No.22-Guru Dayal Sao(defendant No. 19) and appellant No. 41-Ugni Devi(defendant No. 35) expired and as no steps for substitution of their heirs and legal representatives were taken within the time prescribed, the same abated and application for substitution of their heirs after setting aside abatement and condonation of delay was rejected after recording finding that no sufficient cause was shown either for condonation of delay or setting aside abatement.

The short facts are that when First Appeal No. 307 of 1989(R) was listed for hearing, appellants' counsel wrote a letter intimating the client about listing of the matter whereupon one of the appellants in the appeal came on 18th September, 1998, met his counsel and during the course of discussion, it transpired that appellant Nos. 2,3,22 and 41 had already expired whereupon the counsel instructed the client to go to the village and bring the Vakalatnama from the heirs and legal representatives of the deceased persons for filing substitution application. After obtaining the Vakalatnama, the client came back on 20th September, 1998 and thereafter on 24th September, 1998, substitution application was filed making a prayer therein for expunging the name of appellant No.2 and making a note that he died on 10th April, 1997 leaving behind appellant Nos. 5, 9 and 10 as his heirs and legal representatives who were already on the record, besides a daughter Sheela Devi for whom prayer was made for bringing her on the record in place of the deceased appellant as it is well settled that in such an eventuality, left out heirs can be brought on the record at any time irrespective of the period of limitation. Further prayer was made in that application for substitution of the heirs and legal representatives named therein of appellant Nos, 3, 22 and 41 after condonation of delay in filing the application for setting aside abatement and setting aside abatement. Appellant No.3 died on 19th December, 1997, No. 22 died in the month of February, 1993 and No. 41 died in the year 1995. In the said appeal, there were 41 appellants belonging to different families, villages and police stations. Some of the appellants who were contesting defendants were members of joint family of the plaintiffs and the contesting defendants whereas others were transferees. As some of the heirs of appellant No. 2 were already on the record, his appeal did not abate and prayer for bringing on record one left out heir was made for which there is no period of limitation. So far appellant No.3 is concerned, there was delay of 130 days in filing the application for substitution. However, in relation to appellant No. 22, the delay was about five years and in relation to appellant No. 41, the delay was about three years, both of whom were transferees and belonged to villages different than the village and police station in which members of joint family of the plaintiffs and contesting defendants resided. The appellants before the High Court were rustic and illiterate villagers and undisputedly no sooner their lawyer advised, steps were taken with utmost expedition without any loss of time.

In the said appeal on behalf of the respondents, a counter affidavit was filed to the aforesaid petition for substitution in which it was not averred that the delay was mala fide, dilatory and/or intentional. Further, there was no denial that all the appellants were rustic villagers and except appellant No.6, all were illiterate.

A learned Single Judge of Ranchi Bench of the Patna High Court as it then existed, by order dated 18th November, 1998 directed for expunging name of appellant No.2 from the record, making a note that appellant Nos. 5,9 and 10 were already on the record as his heirs and legal representatives and impleading the daughter who was not on the record. So far the prayer for substitution of the heirs of appellant Nos. 3, 22 and 41 is concerned, the same was refused as it was held that no sufficient cause was shown for condonation of delay in filing the application to set aside abatement and setting aside abatement. Against the said order, the appellants preferred a Letters Patent Appeal before the Jharkhand High Court which was created by then, and the said appeal was dismissed on 11th January, 2001. Hence, this appeal by special leave.

Shri Gaurav Agrawal, learned counsel appearing on behalf of the appellants, who was thoroughly ready both on facts as well as law, found out all the relevant decisions on the point in issue and by placing the same with fairness, submitted in support of this appeal that as the appellants, who were rustic and illiterate villagers, belonged to different families, different villages within different police stations and in the absence of anything to show that the delay was mala fide, intentional or any dilatory tactics was adopted, the same should have been condoned and abatement set aside as the expression 'sufficient cause' should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. On the other hand, Shri Amarendra Sharan, learned Senior Counsel appearing on behalf of the respondents, with his usual vehemence, submitted that the High Court was quite justified in holding that no sufficient cause was made out for condonation of delay and setting aside abatement and accordingly no interference with the impugned order is called for in the exercise of discretionary powers of this Court under Article 136 of the Constitution of India.

The expression 'sufficient cause' within the meaning of Section 5 of the Limitation Act, 1963 (hereinafter referred to as 'the Act'), Order 22 Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'the Code") as well as similar other provisions and the ambit of exercise of powers thereunder have been subject matter of consideration before this Court on numerous occasions. In the case of The State of West Bengal v. The Administrator, Howrah Municipality and others (1972) 1 Supreme Court Cases 366, while considering scope of the expression 'sufficient cause' within the meaning of Section 5 of the Act, this Court laid down that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

In the case of Sital Prasad Saxena (dead) by Lrs. v. Union of India and others AIR 1985 Supreme Court 1, the Court was dealing with a case where in a second appeal, appellant died and application for substitution after condonation of delay and setting aside abatement filed after two years by the heirs and legal representatives was rejected on the ground that no sufficient cause was shown and the appeal was held to have abated. When the matter was brought to this Court, the appeal was

allowed, delay in filing the petition for setting aside the abatement was condoned, abatement was set aside, prayer for substitution was granted and High Court was directed to dispose of the appeal on merits and while doing so, it was observed that once an appeal is pending in the High Court, the heirs are not expected to keep a constant watch on the continued existence of parties to the appeal before the High Court which has a seat far away from where parties in rural areas may be residing inasmuch as in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party. It was further observed that Courts should recall that "what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties. " (Emphasis added).

In the case of Rama Ravalu Gavade v.Sataba Gavadu Gavade (dead) through LRs. and another (1997) 1 Supreme Court Cases 261, during the pendency of the appeal, one of the parties died. In that case, the High Court had refused to condone the delay in making an application for setting aside abatement and set aside abatement, but this Court condoned the delay, set aside abatement and directed the appellate court to dispose of appeal on merit observing that the High Court was not right in refusing to condone the delay as necessary steps could not be taken within the time prescribed on account of the fact that the appellant was an illiterate farmer.

In the case of N.Balakrishnan v. M.Krishnamurthy (1998) 7 Supreme Court Cases 123, there was a delay of 883 days in filing application for setting aside exparte decree for which application for condonation of delay was filed. The trial court having found that sufficient cause was made out for condonation of delay, condoned the delay but when the matter was taken to the High Court of Judicature at Madras in a revision application under Section 115 of the Code, it was observed that the delay of 883 days in filing the application was not properly explained and it was held that the trial court was not justified in condoning the delay resulting into reversal of its order whereupon this Court was successfully moved which was of the view that the High Court was not justified in interfering with order passed by trial court whereby delay in filing the application for setting aside exparte decree was condoned and accordingly order of the High Court was set aside. K.T.Thomas, J., speaking for the Court succinctly laid down the law observing thus in paras 8, 9 and 10 :

> "8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.
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> 9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. 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 a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammeled by the conclusion of the lower court.
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> 10. .
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> The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The 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."

[Emphasis added] The Court further observed in paragraphs 11, 12 and 13 which run thus:-

> "11. Rules of limitation are not meant to destroy the rights 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 up 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.
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> 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 Kumari (1969) 1 SCR 1006 and State of W.B. v. Administrator, Howrah Municipality (1972) 1 SCC 366.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. "

[Emphasis added] Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

In view of the foregoing discussions, we are clearly of the opinion that on the facts of present case, Division Bench of the High Court was not justified in upholding order passed by the learned Single Judge whereby prayers for condonation of delay and setting aside abatement were refused and accordingly the delay in filing the petition for setting aside abatement is condoned, abatement is set aside and prayer for substitution is granted.

In the result, the appeal is allowed, impugned orders passed by the High Court are set aside and the matter is remitted back to the learned Single Judge for deciding the First Appeal on merits in accordance with law. In the circumstances of the case, we direct that the parties shall bear their own costs.

..J. [M.B.SHAH] J. [B.N.AGRAWAL] FEBRUARY 27, 2002.