



2026:CGHC:541

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**FA No. 161 of 2018**

**1** - Haseena Begum W/o Shri Abhul Razzak Aged About 56 Years R/o Bhoi Para, Near Panch Path Chowk, Brahmanpara Ward, Raipur, Tehsil And District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

**2** - Abdul Razzak (Died Through Lrs)- As Per Honble Court Order Dated 25-04-2025.

**2.1** - Abbas Ahmed S/o Late Abdul Razzak Aged About 44 Years R/o 298 Brahmanpara Panchpath Chowk, Brahmanpara Raipur, 492001.

**2.2** - Abrar Ahmed S/o Late Abdul Razzak Aged About 41 Years R/o 298 Brahmanpara Panchpath Chowk, Brahmanpara Raipur, 492001.

**2.3** - Roobina Khatun W/o Shamsher Khan Aged About 38 Years Ward No. 12, Pandatarai, Kawardha Chhattisgarh.

**2.4** - Safiya Khan W/o Mohammad Amir Khan Aged About 34 Years R/o H. No. 481 Ward No. 60 Pension Para Katul Board, Vtc Saf Lines Bhilai, Durg C.G.

**2.5** - Rajiya Khatun C/o Ayazuddin Qureshi Aged About 38 Years R/o 2254 Ward No. 44 Panchpath Chowk, Bramhanpara, Raipur, C.G.

**.... Appellants/Defendants No.1 & 2**

**versus**

**1** - Ramavtar Agrawal S/o Late Shri Somchand Agrawal Aged About 63 Years R/o Ashwini Nagar, Raipur, Tehsil And District Raipur, Chhattisgarh (Plaintiff), District : Raipur, Chhattisgarh **...Plaintiff**

**2** - Smt. Pamatmi Bai W/o Late Somchand Agrawal Aged About 73 Years R/o

Ashwini Nagar, Raipur, Tehsil And District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

**3 - Rajaram Agrawal** S/o Late Somchand Agrawal Aged About 58 Years R/o Ashwini Nagar, Raipur, Tehsil And District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

**4 - Hemraj Agrawal** S/o Late Shri Somchand Agrawal Aged About 48 Years R/o Ashwini Nagar, Raipur, Tehsil And District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

**5 - Smt. Radha Bai** W/o Shri Nandkishor Agrawal Aged About 53 Years R/o Near Government School, Raipura, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

**6 - Smt. Uma Bai** W/o Shri Naresh Prasad Sarawgi Aged About 49 Years R/o Tatibandh, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

**7 - Smt. Rama Bai** W/o Shri Anil Agrawal Aged About 38 Years R/o Ashwini Nagar, Mahadev Ghat Road, Raipur, Chhattisgarh (Defendant No. 3 To 8), District : Raipur, Chhattisgarh

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For Appellants/Defendants No.1 & 2 : Mrs.Fouzia Mirza,  
Senior Advocate along with Ms.

Rashika Soni, Advocate

For Respondent No.1/Plaintiff : Mr. H.B. Agrawal, Senior Advocate  
along with Ms. Preeti Yadav,  
Advocate

For other respondents : None appears though served

**Date of Hearing** : **26.11.2025**

**Date of Judgment** : **06.01.2026**

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**Hon'ble Shri Justice Rakesh Mohan Pandey**

**CAV JUDGMENT**

1. Heard.
2. Initially, this appeal was preferred by defendants No.1 & 2, but during the pendency of this first appeal, defendant No.2, namely, Abdul Razzak, died, and his name was deleted, and his legal representatives were brought on record.
3. The defendants have filed this appeal under Section 96 of the CPC, challenging the judgment and decree passed by the learned Sixth Additional District Judge, Raipur, in Civil Suit No.53A/2013, whereby the suit filed by the plaintiff for partition, possession, and *mesne profit* was decreed vide judgment and decree dated 29.11.2017. The plaintiff/respondent No.1 is the son of the late Somchand Agrawal. Somchand Agrawal died on 03.11.1984. A Civil Suit No.151-A/1965 was filed by Somchand Agrawal for specific performance of contract with respect to the suit house Nos. 13/631 & 13/632 situated at Village Bramhanpara, Raipur. The said suit was decreed by the learned Second Civil Judge Class II, Raipur, vide judgment and decree dated 14.12.1967. Chhedi @ Salarbux was defendant No.1, who had entered into a sale agreement with the late Somchand Agrawal. The sale deed was executed on 11.03.1991 by the learned Trial Court according to provisions of Order 21 Rule 34 of CPC in favour of Ramavtar Agrawal, S/o Late Somchand Agrawal, who is respondent No.1 herein. As per the records, the execution application was moved on 29.07.1988 pursuant to the judgment and decree passed by the learned Trial Court in favor of the late

Somchand Agrawal, whereby he was held the owner of 33/40 share of the suit property. During the pendency of the execution proceedings, one Budhobai raised an objection on 16.02.1996 in execution proceedings to the effect that the suit property is joint family property and possession cannot be handed over to the plaintiff in the absence of partition of the property. Thereafter, Abdul Razzak and Haseena Begum raised an objection before the learned Executing Court, and their objection was rejected vide order dated 27.07.2010. Against the said order, WP(227) No.6006/2010 was filed by Abdul Razzak and another, whereby a direction was issued to the learned Executing Court to conclude the execution proceedings in accordance with law so far as the delivery of possession is concerned. Against the order dated 28.02.2011, Review Petition No.107 of 2011 was filed by the plaintiff Ram Awatar Agrawal which was dismissed vide order dated 03.02.2012 reserving liberty in his favour to institute a suit for partition of the property. Thereafter, Ram Awatar Agrawal/plaintiff filed a suit for partition, possession, and *mesne profit* on 21.06.2013.

4. Defendants No.1 & 2 filed their written statement and denied the plaint averments. They pleaded that the suit property was purchased by Abdul Razzak from one Khwaza Hussain through a registered sale deed dated 07.09.1957 for a sale consideration of Rs.700/. It was also pleaded that defendant No.2, Abdul Razzak, was not impleaded as a party in earlier proceedings.

5. Learned Trial Court framed issues, the parties led evidence and thereafter the suit was decreed vide judgment and decree dated 29.11.2017.
6. Mrs. Mirza, learned counsel appearing for the appellants, would submit that the suit filed by late Somchand Agrawal for specific performance of the contract pertaining to the suit house was decreed vide judgment and decree dated 14.12.1967, wherein the original plaintiff was held entitled to get 33/40th share of title and interest in the suit house. Mrs. Mirza would further submit that a sale deed was executed in favour of the original plaintiff by the learned Trial Court on 07.12.1968, and this fact has not been disclosed by the plaintiff in the plaint. She would also submit that the appellants have placed on record the certified copy of the order passed by the learned Civil Judge Class II, Raipur, dated 07.12.1968, along with an application under Order 41 Rule 27 of CPC. She would contend that in the plaint, the original plaintiff sought relief for possession of the property and failed to seek relief of partition. She would further contend that no relief for partition was sought for by the original plaintiff; therefore, the learned Trial Court erred in law while granting relief of partition, which was not sought for. It is also contended that the suit filed by the plaintiff for partition on 21.06.2013 was barred by limitation. It is argued that any observation made by the High Court would not extend the period of limitation. She would further argue that the original plaintiff was aware of the fact that the suit house is the joint

family property and in the absence of partition of the said property, possession could not have been handed over. She would also argue that for the first time, an objection was raised by Budhobai on 16.02.1996. She would state that again an objection was raised by Abdul Razzak and Haseena Begum, and it was rejected on 27.07.2010. She would further state that the suit was filed on 23.06.2010, but no steps were taken by the plaintiff to file a suit for partition. She would also state that the plaintiff suppressed the material facts while filing the suit with regard to the order passed by the learned Trial Court dated 07.12.1968, and again approached the learned Executing Court for execution of the decree in the year 1988, with a delay of 20 years. She would contend that when the said sale deed was executed in favour of late Somchand Agrawal in the year 1968, there was no occasion for the learned Executing Court to pass a fresh order for execution of the sale deed on 11.03.1991. She would further contend that a notice was issued to the plaintiff to approach the Sub-Registrar for registration of sale deed on 26.02.1985, thus, the plaintiff was aware of the fact that the sale deed is not registered one but no steps were taken in this regard and in the absence of registration of the sale deed, the suit for partition was not maintainable according to the provisions of Section 54, Order 20 Rule 18 and Order 21 Rule 34(6) of CPC. She would submit that the learned Trial Court held that the cause of action arose in favour of the plaintiff on 03.02.2012, whereby the

review petition filed by the plaintiff was dismissed, and liberty was granted to file a suit for partition. It is argued that even the Courts cannot extend the period of limitation. In support, she placed reliance on the judgment passed by the Hon'ble Supreme Court in the matters of ***Ram Preet Yadav Vs. U.P. Board of High School and Intermediate Education and Others, 2003 (8) SCC 311, Pathapati Subba Reddy (died) by Lrs. and others Vs. the Special Deputy Collector (LA), SLP (Civil) No.31248 of 2018, F. Liansanga & another Vs. Union of India and others, 2022 Livelaw (SC) 252,*** and, the judgment passed by the High Court of Chhattisgarh in the matter of ***Menharan Vs. Ghanaram and others, 2014 (4) CGLJ 117.***

7. On the other hand, Mr. Agrawal, learned Senior Advocate appearing for the plaintiff, would oppose the submissions made by Mrs. Mirza. He would submit that though the sale deed was executed in favour of late Somchand Agrawal on 07.12.1968 but its registration was refused by the Sub-Registrar vide noting dated 30.07.1970. He would further submit that after the death of Somchand Agrawal, his legal representatives applied for a succession certificate. He would also submit that though a notice was issued by the Sub-Registrar to the plaintiff to appear in its office but in the absence of a succession certificate, it was not possible for the Sub Registrar to execute a registered sale deed in his favour. He would contend that an execution application was moved on 29.07.1988 before the learned

Executing Court, wherein an objection was raised by defendants No.1 & 2 for the first time on 23.06.2010. He would further contend that the objection raised by defendants No.1 & 2 was rejected by the learned Trial Court, and against the said order, WP(227) No.6006/2010 was filed, which was dismissed vide order dated 28.02.2011. He would also contend that the review petition was filed by the plaintiff, and it was dismissed reserving liberty in his favour to institute a suit for partition vide order dated 03.02.2012, and immediately, thereafter, a suit was filed. He would argue that as liberty was granted by the High Court to institute a suit, the cause of action arose on 03.02.2012, and the suit filed by the plaintiff was within limitation. Mr. Agrawal would further argue that the sale deed executed in his favour was registered on 11.03.1991 and therefore, the contention made by Mrs. Mirza with regard to the applicability of Section 54, Order 20 Rule 18 and Order 21 Rule 34(6) of CPC would not arise. Mr. Agrawal would also argue that in the plaint, the plaintiff had sought the relief of partition. He would further state that the relief of possession includes partition. Mr. Agrawal would submit that the Hon'ble Supreme Court in the matter ***Krishna Pillai Rajasekharan Nair (dead) by Lrs. Vs. Padmanabha Pillai (dead) by Lrs. and others, 2004 (12) SCC 754***, has held that the period of limitation would start to run from the date when liberty was granted by the High Court to file a suit.

8. I have heard the learned counsel appearing for the parties and

perused the record.

9. The question for determination would be:-

- (I) Whether the suit filed by the plaintiff was barred by limitation?
- (II) Whether the learned Trial Court was justified in decreeing the suit?

10. The admitted facts are that initially, the suit house was purchased during the minority of Razzak Ahmed by his mother, Zubaida Khatoon, from one Khwaja Hussain through a sale deed dated 07.09.1957. Thereafter, an agreement to sell the suit house was entered into between Somchand Agarwal and Chedi Khan @ Salar Bux on 08.12.1957. Chedi Khan @ Salar Bux failed to execute the sale deed; therefore, a suit for specific performance of the contract was filed by late Somchand Agrawal bearing Civil Suit No.151-A/1965 on 20.06.1960. The judgment and decree were passed in favour of Somchand Agarwal on 14.12.1967 by the learned Second Civil Judge, Raipur. An application for execution was moved by the original plaintiff, and a sale deed was executed on 07.12.1968 by the Executing Court according to the provisions of Order 21 Rule 34 of CPC. There was one more legal dispute amongst the defendants, and Second Appeal No.95/1961 was filed by Budhbai before the High Court of Madhya Pradesh, which was allowed vide judgment and decree dated 30.09.1964, wherein she was held entitled to get 7/40th share of the suit house. Despite the execution of the sale deed, the suit property could not be handed

over to the plaintiff, as there was no partition. The sale deed executed on 07.12.1968 was presented for registration before the Sub-Registrar but the said authority refused to register it. Somchand Agarwal (original plaintiff) died on 03.11.1984. Thereafter, an application was made by the plaintiff for a succession certificate, which was granted vide order dated 22.11.1989. The plaintiff Ramavtar Agarwal filed an application for execution of the decree in the year 1988, and the sale deed was executed by the learned Executing Court in his favour on 11.03.1991. It was registered according to the Registration Act in the office of the Sub-Registrar, Raipur.

11. An application under Order 21 Rule 29 of CPC was filed by the judgment debtors/appellants herein on 16.03.1994. An objection was raised by Budhobai on 16.02.1996 to the effect that the property is the joint property, and she has the right over 7/40th share of the suit house. An objection was raised by the judgment debtors/appellants herein on 12.05.2010 under Order 21 Rule 35(2) of the CPC, and it was rejected by the learned Executing Court vide order dated 27.07.2010. The appellants herein filed WP227 No.6006/2010, which was disposed of vide order dated 28.02.2011, and a direction was issued to the learned Executing Court to conclude the execution proceedings in accordance with the law so far as the delivery of possession is concerned.

12. The plaintiff Ramavtar Agarwal filed a review application, and it was dismissed vide order dated 03.02.2012 but at the same time, the High Court granted liberty to the plaintiff to file a suit seeking partition of the suit property.
13. The plaintiff filed a suit bearing registration No. 53A/2013 on 22.06.2013 and claimed 33/40th share in the suit property along with possession and mesne profit. Learned Trial Court decreed the suit vide judgment and decree dated 29.11.2017.
14. So far as the argument advanced by Mrs. Mirza with regard to suppression of material facts is concerned, it is evident from the record that the decree was passed in Civil Suit No.151A/1965 on 14.12.1967 and thereafter, a sale deed was executed according to the provisions of Order 21 Rule 34 of CPC on 07.12.1968 but the Sub-Registrar refused to register the sale deed. The plaintiff herein obtained a succession certificate and thereafter approached the learned Executing Court for execution of the decree, and in that proceeding, again a sale deed was executed, and it was registered. The appellants herein have placed on record the sale deed executed by the learned Executing Court on 07.12.1968 but the registration was refused by the Sub-Registrar and this fact is evident from back-leaf of said document. Later on, the father of the plaintiff namely, Somchand Agarwal died on 03.11.1984 and the plaintiff approached the competent Civil Court to get a succession certificate. He filed the execution case in the year 1988, and subsequently, the sale deed

was executed in his favour on 11.03.1991 and the plaintiff has explained the subsequent events in the plaint. On the conspectus of the above-discussed facts and circumstances, the application moved by the appellants herein under Order 41 Rule 27 of CPC is allowed, and the document is taken on record, but the said document would not help the appellants in any manner.

15. In the matter of **Ram Preet Yadav (supra)**, it is held that once fraud is proved, it will deprive the person of all advantages or benefits obtained thereby, and a delay in the detection of or in taking action will raise no equities. In the present case, the appellants herein could not prove that the suppression of earlier execution of the sale deed was deliberate or that it would extend any benefit in favour of the plaintiff; therefore, the law laid down by the Hon'ble Supreme Court in the instant matter would not apply.
16. It was next argued that the plaintiff filed a suit for partition, possession, and mesne profit, but in the relief clause, he failed to claim partition; therefore, the judgment and decree passed by the learned Trial Court is liable to be set aside.
17. A perusal of the plaint would show that the plaintiff filed a suit for partition, possession, and mesne profit. The plaintiff pleaded that pursuant to the decree dated 14.12.1967, the original plaintiff was entitled to get 33/40th share of the property. In the relief clause, the plaintiff has specifically sought possession of 33/40th share of the

property; thus, the plaintiff has sought relief for partition as well as possession, and the contention made by Mrs. Mirza appears to be misconceived.

18. It was next contended that the suit for partition was filed by the plaintiff on 21.06.2013 and thus, it was barred by limitation. It is further contended that any observation or liberty granted by the High Court would not extend the period of limitation. Initially, the suit was filed by the father of the plaintiff for specific performance of the contract, and it was decreed on 14.12.1967. Ramavtar Agrawal (plaintiff) moved an application for execution and in that proceeding, the sale deed was executed in his favour according to the provisions of Order 21 Rule 34 of CPC on 11.03.1991. The sale deed got registered too. An objection was raised with regard to the continuation of execution proceedings by Abdul Razzak and Haseena Begum on the ground that the suit property is joint property, and it was rejected on 27.07.2010. The said order was challenged by the appellants herein by filing WP227 No.6006/2010, and the High Court directed the Executing Court to continue with the execution proceedings so far as it relates to the delivery of possession. The plaintiff Ramavtar filed a review petition, which was dismissed vide order dated 03.02.2012 but at the same time, liberty was granted to file a suit for partition. Pursuant to the liberty granted by the High Court, a suit for partition was filed on 22.06.2013. Article 113 of the Limitation Act, 1963, is the residuary

provision that sets a three-year limitation period to file a suit for which no specific period is prescribed elsewhere in the Act. The three-year period starts running from the moment the right to sue accrues.

19. In the matter of **F. Liansanga (supra)**, the Hon'ble Supreme Court has held that the Court has no power to extend the period of limitation on equitable grounds, even though the statutory provisions may sometimes cause hardship or inconvenience to a particular party.
20. In the matter of **Pathapati Subba Reddy (supra)**, the Hon'ble Supreme Court has held that Section 3 of the Limitation Act states that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence. Relevant paras 9,10, 12, 15 & 26 are reproduced herein below:-

*"9. Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.*

*10. Section 3(1) of the Limitation Act, for the sake of convenience, is reproduced hereinbelow:*

*"3. Bar of limitation. (1) Subject to the provisions contained in sections 4 (inclusive), every suit instituted, appeal preferred, to 24 and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."*

12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

15. It is in the light of the public policy upon which law of limitation is based, the object behind the law of limitation and the mandatory and the directory nature of Section 3 and Section 5 of the Limitation Act that we have to examine and strike a balance between Section 3 and Section 5 of the Limitation Act in the matters of condoning the delay.

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;
- (iii) The provisions of the Limitation Act have to be

*construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*

*(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*

*(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*

*(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

*(vii) Merits of the case are not required to be considered in condoning the delay; and*

*(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."*

21. In the matter of **Menharan (supra)**, the High Court of Chhattisgarh held that in the absence of a specific Article governing the period of limitation in filing the suit for partition, Article 113 of the Limitation Act would be applicable, and the limitation would be three years when the right to sue accrues to the party.
22. Mr. Agrawal, learned Senior Advocate, has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of **Krishna Pillai Rajasekharan Nair (supra)**, wherein it is held that

the period of limitation would start to run from the date when liberty was granted by the High Court to file a suit. It reads thus:-

*22. In our opinion, the suit filed in the present case being a suit for partition primarily and predominantly and the relief of redemption having been sought for only pursuant to the direction made by the High Court in its order of remand, the limitation for the suit would be governed by Article 120 of the Limitation Act, 1908. For a suit for partition the starting point of limitation is — when the right to sue accrues, that is, when the plaintiff has notice of his entitlement to partition being denied. In such a suit, the right of the redeeming co-mortgagor would be to resist the claim of non-redeeming co-mortgagor by pleading his right of contribution and not to part with the property unless the non-redeeming co-mortgagor had discharged his duty to make contribution. This equitable defence taken by the redeeming co-mortgagor in the written statement would not convert the suit into a suit for redemption filed by the non-redeeming co-mortgagor.*

23. Taking into consideration the fact that the objection raised by the appellants herein was rejected by the learned Executing Court on 27.07.2010, and it was challenged by filing WP227 No.6006/2010, which was dismissed vide order dated 28.02.2011. A review petition was filed by the plaintiff Ramavtar Agrawal and it was dismissed vide order dated 03.02.2012 but liberty was granted on 03.02.2012 and thus, from the date of rejection of the application moved by the appellants herein dated 27.07.2010, the suit was filed within a period of three years on 22.06.2013, thus, the suit was filed within the period of three years from the date of objection. Further, liberty was

granted by the High Court to file a suit for partition.

24. Thus, in my opinion, the suit filed by the plaintiff for partition was within the limitation. It was also argued that the sale deed was not registered in the office of the Sub-Registrar, whereas, in the absence of registration of the sale deed, the suit for partition was not maintainable according to the provisions of Section 54, Order 20 Rule 18, and Order 21 Rule 34(6) of CPC. During the course of hearing, the learned Deputy Government Advocate appearing for the State was directed to seek instruction with regard to the registration of the sale deed and it was informed that the sale deed was registered in the office of Sub-Registrar, thus, the contention made by Mrs. Mirza with regard to the provisions of Section 54, and Order 21 Rule 34(6) of CPC appears to be misconceived.
25. The facts discussed above would reveal that the defendants/appellants never challenged the judgment and decree passed in Civil Suit No.151-A/1965 dated 14.12.1967, and it attained finality. The learned Executing Court executed the sale deed in favor of the plaintiff on 11.3.1991, and the said order was also not challenged by the appellants herein. The liberty granted by the High Court in Review Petition No.107 of 2011 was also not challenged by the appellants. Therefore, the contentions made by Mrs. Fouzia Mirza with regard to the delay in filing the suit cannot be accepted.
26. Taking into consideration the above-discussed facts, it is held that

the suit filed by the plaintiff was within limitation and the learned Trial Court rightly decreed the suit.

27. Accordingly, this appeal fails and is hereby **dismissed**. No cost(s).
28. A decree be drawn accordingly.

**Sd/-**  
**(Rakesh Mohan Pandey)**  
Judge

Rekha