

HIGH COURT OF TRIPURA
AGARTALA
RSA 32 of 2022

Sri Subrata Sinha,

son of late Surendra Kumar Sinha alias Surendra Sinha, resident of
Ichabpur, P.O. Ichabpur, P.S. Kailasahar, District- Unakoti Tripura

... Appellant

VERSUS

Smt. Sibani Sinha,

daughter of late Surendra Kumar Sinha @ Surendra Sinha, wife of Sri
Ashok Sinha, resident of Chirakuti, P.O. Kirtantali, P.S. Kailasahar,
District- Unakoti, Tripura

... Respondents

For Appellant (s)	:	Mr. Raju Datta, Advocate
For Respondent (s)	:	Mr. H. Deb, Advocate
Date of hearing and delivery of judgment order	:	26.05.2023
Whether fit for reporting	:	Yes / No

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

Heard Mr. Raju Datta, learned counsel appearing for the
appellant as well as Mr. H. Deb, learned counsel appearing for the
respondents.

2. This second appeal has been filed by the defendant-appellant
against the order dated 21.03.2022 passed by the learned District Judge,
Unakoti District, Kailasahar in connection Civil Misc. (Condonation) 09 of
2020 arising out of Title Appeal no. 08 of 2020 wherein the learned District
Judge has dismissed the condonation application in connection with T.A. 8 of
2020 filed by the appellant on the ground of inordinate delay caused in filing
the appeal, and thereby uphold the judgment and final decree dated
15.03.2018 and 14.09.2018 passed by the learned Civil Judge, Senior
Division, Unakoti, Kailasahar in T.S. (P) 13 of 2016.

3. At the time of admission of the appeal vide order dated 04.07.2022, the following substantial question of law had been formulated:-

“Whether the findings of the first appellate court are perverse?”

4. Briefly stated, the respondent herein i.e. the original plaintiff, filed a partition suit before the learned Civil Judge, Senior Division, Unakoti, Kailasahar, which was registered as T.S. (P) 13 of 2016, and the learned trial court vide judgment and final decree dated 15.03.2018 and 14.09.2018 allowed and decreed the suit. Being aggrieved, the appellant herein i.e. the original defendant, preferred an appeal before the learned District Judge, Unakoti, Kailasahar which was numbered as Title Appeal 08 of 2020. Since the appellant had preferred the appeal after expiry of statutory period of limitation i.e. after the lapse of 827 days, the appellant had filed an application under Section 5 of the Limitation Act praying for condoning the delay, which was registered as Misc. (Condonation) 09 of 2020. After hearing learned counsel appearing for both the parties to the *lis*, the learned appellate court dismissed the condonation application filed by the appellant on the ground of inordinate delay caused in filing the appeal. Being aggrieved, the appellant has preferred this instant second appeal before this court.

5. Mr. Datta, learned counsel appearing for the appellant has submitted that the appellant was prevented by sufficient cause in preferring the appeal within the prescribed period of limitation, and there was no laches or negligence on the part of the appellant. Finally, Mr. Datta, learned counsel has urged this court to set-aside the judgment dated 21.03.2022 passed by the

learned first appellate court and remand back the matter to the learned trial court.

6. On the other hand, Mr. H. Deb, learned counsel for the respondent has defended the judgment dated 21.03.2022 passed by the learned first appellate court.

7. I have gone through the judgment dated 21.03.2022 passed by the learned appellate court by which the application for condonation of delay filed by the appellant was dismissed consequent to which the appeal also was dismissed. While dismissing the application for condonation of delay, the learned appellate court had observed thus:

“ Perused the petition, WO and also heard Learned Counsels of both the sides on the application filed by the appellant U/S 5 of the Limitation Act for condoning the delay of 827 days.

The expression “sufficient cause” has not been defined. It means a cause, which is beyond the control of the party invoking the aid of the Act. The test, whether or not, a case is sufficient, is to see whether it is a bona fide cause, in as much, as nothing shall be taken to be done bona fide or in good faith which is not done with due care and attention. Moreover, where no reasonable cause is shown for delay, it should not be condoned merely on grounds of merits of the case.

In this present case on perusal of the judgment passed in TS (P) 13/2016 it reveals that the appellant -petitioner of this case namely Subrata Sinha was the defendant No 1 in that suit and he accordingly filed his written statement and also contested the suit by adducing evidence of three nos of witnesses and also exhibited total 13 nos of exhibits from his side. The act of the defendant by contesting the said suit and also adducing evidence from his side shows that he was having knowledge about the said suit . I have also gone through the order dtd 30.08.2019 passed in Execution 07(T) of 2019 it reveals that there was no step from the JD who is the appellant-petitioner of this case. Again in the order dtd 16.09.2019 passed in Case No Execution 07(T) of 2019 again no step was taken from the JD side. On perusal of the said order it reveals that decreetal land was already handed over to the decree holder as per the Writ. Now, coming to the reasons stated by the appellant petitioner in his petition it shows that the appellant-petitioner could not file necessary step as he was disturbed due to the act of the decree holder who was trying to dispossess over the parts of the land which were decreed wrongly in favour of the plaintiff-respondent. The petitioner also stated that due to the continuing pressure of the plaintiff-respondent the petitioner spent the entire year of 2019 trying to protect his possession against

the plaintiff-respondent. On perusal of the petition it reveals that there is delay of 827 days in preferring the appeal against the final decree dtd 04.09.2019.

As on perusal of the case record TS(P) 13/2016 it reveals that the appellant-petitioner of this case contested the said suit by filing his written statement and also by adducing evidence from his side. Moreover, on perusal of the order passed in Execution (T) 07/2019 it reveals that the appellant-petitioner of this case did not take any step from his side when the decree was going to be executed. The reasons given by the appellant-petitioner in not preferring the appeal is not reasonable and justifiable for condoning the delay of 827 days.

As the appellant-petitioner was having sufficient knowledge about the partition case and also as he did not take any step when the decree was executed it shows great laches on the part of the appellant-petitioner in preferring the petition U/S 5 of the Limitation Act.

Delay occurred in the present case is about 827 days which is certainly inordinate delay and the same has not been unaccounted for by the petitioner properly. Hence, in my opinion stricter approach is required to be adopted while considering the present petition.

Hence, from the above discussion made, the present petition filed by the appellant-petitioner having no merit and is accordingly rejected.

The petition is thus disposed of on contest.”.

8. It is found that during this period of 827 days, the appellant had approached the administrative authorities at different points of time by filing applications under Section 134/145 of the CrPC. So, the submission of the learned counsel appearing for the appellant is not consumable to this Court that the appellant was prevented to file the first appeal on some reasonable grounds. I do not find any error committed by the learned first appellate court in rejecting the application for condonation of delay of 827 days.

9. Accordingly, the instant appeal stands dismissed being devoid of any merit.

Send down the LCRs forthwith.

JUDGE