

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.78 of 1994

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Jagdish Missir

.... Appellant/s

Versus

Sarswati Devi & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar
Mr. Satish Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

12 28-09-2016

Heard learned counsel, Mr. Satish Kumar, appearing

for the appellant and learned counsel, Mr. A.K. Sinha, appearing
for one of the heirs of the deceased-respondents on the
interlocutory application being I.A. No. 776 of 2013.

2. This interlocutory application has been filed by the
appellant for substitution of the legal representatives of the
decease-respondent Nos. 1 and 2 both. It is stated that respondent
No.1 died in the year 2004 whereas respondent No.2 died in the
year 1997. The application is barred by law of limitation,
therefore, prayer has been made for condoning the delay in filing
the substitution application. The ground of the appellant is that the
appellant is a service holder and lives with his family out of the
State and when he came to Bihar in marriage ceremony, he came
to know that respondent No.1 and respondent No.2 have died. The



counsel for the appellant for the first time came to know about the death of respondent No.1 on 07.07.2011 through the office of the High Court. Except this explanation, there is nothing on record to show that what is service of the appellant and since when he was residing outside the Bihar. It appears that the suit was filed by the plaintiff-appellant for declaration that gift deed dated 08.04.1982 executed by the plaintiff in the name of defendant No.1 is illegal, bogus, sham and fraudulent. Now, in view of this relief claimed by the plaintiff, it appears that, *prima facie*, the gift deed was executed, which is a registered gift deed which indicates that the appellant had executed the same out of love and affection. Now, the explanation is given that he had no knowledge about the death as he was outside the state in relation to his service. The question is whether this fanciful drafting of the application or submission of the learned counsel for the appellant is acceptable by the courts of law. Can it be believed that he will not be knowing the death of respondents who were loved by him earlier.

3. The Hon'ble Supreme Court in the case of ***Pundlik Jalam Patil (D) by Lrs. Vs. Executive Engineer, Jalgaon Medium Project & ...*** reported in ***2008 (14) SCC 448*** has held that incorrect statement made in application seeking condonation of delay itself is sufficient to reject the application without any

further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. *Prima facie* from the facts, stated above, it appears that in the present case, explanation has been given for the purpose of obtaining the order for condoning the delay.

4. The Hon'ble Supreme Court in the case of ***Esha Bhattacharjee Vs. Management Committee of Raghunathpur Nafar Academy & Ors.*** reported in ***2014 (1) PLJR 290 SC*** has given some guidelines for consideration while hearing the application under Section 5 of the Limitation Act. The Hon'ble Supreme Court has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. 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. 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.

5. In my opinion, these decisions of the Hon’ble Supreme Court fully apply and therefore, the concocted ground or fanciful ground, mentioned in the application for the purposed of condoning the delay, cannot be accepted, particularly, when the statement, *prima facie*, appears to be incorrect. Thus, this interlocutory application filed by the appellant is, hereby, rejected.

6. Since the substitution application is rejected, now, there is no respondent in the second appeal. Therefore, this second appeal is incompetent. Accordingly, this second appeal is dismissed itself as barred by law of limitation.

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(Mungeshwar Sahoo, J)