

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.31 of 2016

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1. Suraj Rai Son of late Manki Rai
2. Raj kumar Rai
3. Bachchan Rai@Baban Rai
4. Chandrama Rai
5. Kameshwar Rai
6. Shila Rai
7. Shambhu Rai
8. Darbera Rai@Darbesh Rai Sons of Suraj Rai All are Resident of Village Badka telpa tole Shiv Nagari PS Chapra Muffasil Po Chapra At Present Po Gurukul District Saran.

.... Appellants

Versus

1. Vishwanath Rai
2. Bholai Rai
3. Hira Rai
4. Jamdar Rai All Sons of Dhundh Rai All are Resident of Village Badka telpa tole Shiv Nagari PS Chapra Muffasil Po Chapra At Present Po Gurukul District Saran.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

4 26-08-2016 Heard Mr. Tiwary, learned Counsel appearing for the appellants, in the Interlocutory Application (I.A. No. 861 of 2016), which has been filed for condonation of delay of 115 days in filing this appeal.

This application was earlier heard on 29.6.2016. The matter was, however, adjourned to enable the appellants to file supplementary affidavit, which has been filed. In the order dated



29.6.2016 it was observed that there was no explanation in the entire Interlocutory Application as to why the appeal could not be filed in between the period when the certified copy of the judgment and decree under appeal were ready for being handed over to the appellants and before the period when appellant No. 1 fell ill. It was also taken into notice that there was no accompanying medical document to support the long illness of appellant No. 1.

From the record, it transpires that this appeal has been filed against the judgment and decree dated 2.3.2015 passed in Title Appeal No. 55 of 2011/ 3 of 2014. It further appears that the certified copy of the judgment and decree were applied for on 3.3.2015 and the same became ready on 16.5.2015. This appeal has been filed on 7.12.2015. There are altogether eight appellants in this appeal. However, the plea has been raised on behalf of the appellants that as the appellant No. 1, who was the pairvikar on behalf of the appellants, fell ill and remained ill from 1.8.2015 up to 4.12.2015 the appeal could not be filed during the prescribed period of limitation. There is, however, no disclosure of the illness of appellant No. 1 which continued for four months, nor is there any supporting medical document. There is no explanation on behalf of the appellants as to why the appeal could not be filed in between 16.5.2015 up to 1.8.2015. In para 4 of the supplementary affidavit, it has, however, been stated that the Advocate Clerk, who was entrusted to obtain the certified copy of the of the judgment and decree under appeal by the appellant No. 1, did not obtain information and did not inform the appellant No. 1 that the same was



ready. But again there is no statement that the appellants or at least appellant No. 1 acted in due diligence in obtaining the certified copy of the judgment and decree under appeal from the court below for filing the appeal. This aspect is important in view of the submission on behalf of the appellants that the appeal should not be dismissed on technical ground as barred by limitation and a lenient approach should be adopted.

In the case of ***Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649***, the Apex Court has drawn a distinction between the inordinate delay and delay of few days and it has also been observed that strict approach should be adopted while considering the prayer for condonation of delay in the case of inordinate delay. The casual approach on behalf of the appellants in filing this appeal is explicit from the Interlocutory Application for condonation of delay as well as the supplementary affidavit in addition to the facts stated in the Interlocutory Application. The submission on behalf of the appellants that the appeal should not be dismissed on technical ground as barred by limitation and a lenient approach should be adopted has its complete answer in the decision by the Apex Court in the case of ***Esha Bhattacharjee*** (supra).

After considering the averments made in the Interlocutory Application and the supplementary affidavit as well as the submissions made, this Court does not find that sufficient cause has been established on behalf of the appellants for condonation of delay in filing this appeal.

The Interlocutory Application (I.A. No. 861 of 2016) is

dismissed. Consequently this appeal is also dismissed as barred by limitation.

(V. Nath, J.)

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