

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.153 of 2010

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1. M/S Dipak Handloom Stores, A partnership firm situated at Mohalla-Tanti Bazar Road, Champanagar, P.S. Nathnagar, District Bhagalpur.
 2. Sri Bijay Kumar Lal
 3. Sri Ajoy Kumar Lal
 4. Sri Abhay Kumar Lal
 5. Sri Nirbhay Kumar Lal

All sons of Late Babu Lal Sah, partners of M/S Dipak Handloom Stores, residents of Mohalla-Tanti Bazar Road, Champanagar, P.S. Nathnagar, District Bhagalpur

.... Defendant 1st Set-----Appellants
Versus

1. State Bank of India, City Branch, Through Chief Manager, City Branch, at Sonapatti, Sujanganj, P.O. Bhagalpur City, P.S. Kotwali, District Bhagalpur.

.... Plaintiff---Respondent 1st Set

2. Sri Binay Kumar Lal, Son of Late Babu Lal Sah, are resident of Tanti Bazar Road, Champanagar, P.S. Nathnagar, District Bhagalpur.

.. .Defendant 2nd party-Respondent 2nd Set.

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Appearance :

For the Appellants : Mr. Sanjay Kumar Ghosarvey, Adv.
For the Respondent : Mr. Harshwardhan Sahay, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

13 20-03-2017 Heard learned counsel for the appellants as well as learned counsel for the respondents on I.A. No. 7158 of 2010.

The above stated I.A. No. 7158 of 2010 has been filed on behalf of the appellants for condonation of delay of about more than three years seven months and twenty days.

It has been averred in the aforesaid interlocutory application that the appellants filed Money Suit No. 3/ 1998 through Sri A.K. Chatterjee, Advocate and one Pradeep Chatterjee used to do pairvi in the aforesaid money suit on behalf of the



appellants but all of a sudden, the appellants received a notice under Section 13(2) of SERFAESI Act and thereafter, they got enquired about the above stated money suit and on 18.11.2009, the appellants learnt that the aforesaid money suit had already been decreed. Thereafter, the appellants tried to meet their learned counsel but it came to light that Shri Chaterjee, Advocate had shifted his practice to Naugachhia. The appellants met with one Shri Manoj Kumar Mandal, Advocate on 19.11.2009 who enquired into the matter and informed the appellants that the suit was decreed against the appellants of the present appeal as they failed to make any pairvi in the aforesaid suit. However, the appellants requested the aforesaid Manoj Kumar Mandal, Advocate to arrange the copy of judgment and decree who accordingly, obtained the copy of judgment and decree passed in Money Suit No. 3/ 1998 on 21.12.2009 but in the meantime, appellant no. 2 fallen ill as a result of which, he could not collect the certified copy of judgment and decree of the Money Suit No. 3/ 1998 and when he went to collect the certified copy of judgment and decree of money suit, he could not find the aforesaid Manoj Kumar Mandal, Advocate due to X-mas vacation of the court. However, the appellant no. 2 got certified copy of judgment and decree on 04.01.2010 and contacted his local lawyer



but unfortunately, the appellant no. 2 got severe joint pain and fever as a result whereof, he failed to contact the lawyer. The appellant no. 2 came to Patna on 12.03.2010 and met with Shri R.K. Pandit, Advocate of this Court on 13.03.2010, who directed the appellant no. 2 to bring some relevant documents and thereafter the appellant no. 2 came back to Bhagalpur on 15.03.2010 and started searching the concerned pairvikar who had kept the entire relevant documents but failed to locate the aforesaid pairvikar. However, anyhow, the appellant no. 2 got prepared some documents and again came to Patna on 27.03.2010 to meet his learned counsel but again learned counsel of the appellants demanded some documents and then the appellant no. 2 returned to Bhagalpur on 29.03.2010 but he was again fallen ill and as a result whereof, he could not move anywhere. However, after regaining his health, he met with Shri Manoj Kumar Mandal, Advocate on 27.07.2010 and asked him to obtain the copy of entire order sheets, copy of exhibits and depositions of Money Suit No. 3/ 1998 and subsequently, the aforesaid documents were obtained by Shri Manoj Kumar Mandal, Advocate on 05.08.2010. The appellant no. 2 having obtained the relevant documents again came to Patna on 07.08.2010 and handed over the entire papers to his learned counsel who got prepared memo of appeal on



09.08.2010 and on the very next day i.e. on 10.08.2010 the affidavit was prepared and the present appeal was filed on 11.08.2010.

Learned counsel for the appellants submits that appellants tried their best to file the appeal within time but due to some unavoidable circumstances, the appeal could not be filed in time. He further submits that moreover, the appellants have explained the delay of each and every date giving sufficient cause and, therefore, in view of the decisions rendered by this Court as well as Hon'ble Apex Court, the delay in filing this appeal should be condoned.

On the other hand, learned counsel appearing for the respondents refuted the above stated submissions arguing that the present appeal is hopelessly time barred and the explanations given by the appellants are not sufficient. Learned counsel for the respondents further submits that money suit was filed in the year 1998 and the appellants appeared in the aforesaid money suit and not only filed written statement but contested the aforesaid money suit. He further submits that appellants intentionally left the pairvi of the aforesaid money suit when the concerned court directed the appellants to adduce their evidence. However, the respondents Bank has already filed case in SERFAESI court against the



appellants and, therefore, the appellants may raise their grievances before the SERFAESI court.

In course of hearing, learned counsel for the appellants produced the certified copy of entire order sheets of Money Suit No. 03/ 1998 which goes to show that aforesaid money suit was filed on 26.02.1998 and the appellants did pairvi in the money suit till 15.07.2005 and thereafter, the aforesaid money suit was decreed on 22.09.2006.

Admittedly, the present appeal was filed on 11.08.2010 i.e. beyond period of limitation.

Although, the appellants have tried to explain the delay in filing this appeal but it appears to me that the explanation given in I.A. No. 7158 of 2010 is not satisfactory. Furthermore, I find that even if the pleadings of aforesaid I.A. No. 7158 of 2010 is to be believed, then also, it is admitted case of the appellants that they got the certified copy of impugned judgment and decree on 04.01.2010 but even after getting the certified copy of judgment and decree, they took near about seven months in filing this appeal. Therefore, I do agree with the submission of learned counsel for the respondents that present appeal is hopelessly time barred and the appellants failed to give the sufficient cause of delay in filing this appeal.



Accordingly, I.A. No. 7158 of 2010 stands dismissed
and in result, this appeal stands dismissed on the point of
limitation.

(Hemant Kumar Srivastava, J)

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