

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.69 of 2010

=====

Harpal Choudhary S/O Late Badri Choudhary R/O Vill.- Batheli, P.S. Dandkhora,
Distt.- Katihar

.... Appellant/s

Versus

1. Gore Lal Choudhary S/O Late Badri Choudhary
2. Butan Choudhary S/O Late Badri Choudhary R/O Vill.- Batheli, P.S.
Dandkhora, Distt.- Katihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ajay Kumar, Adv.

For the Respondent/s : Mr. Bhola Prasad, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-04-2017

Heard learned counsel for the appellant and learned
counsel for the respondent no. 2 in the interlocutory application (I.A.
No. 1690 of 2010) which has been filed for condonation of delay of 1
year, 5 months and 8 days in filing this appeal.

The plaintiff has filed this appeal against the judgment
and decree of affirmance dismissing the suit. The impugned judgment
and decree by the appellate court below was passed on 26.05.2008.
This appeal, however, has been filed before this Court on 18.02.2010.

It has been averred in the interlocutory application (I.A.
No. 1690 of 2010) that after the dispute with regard to the suit land
with his brother, the appellant left his native village as a criminal case
had already been lodged against the appellant in the year 2007. It has



also been averred that the appellant came to know about the impugned judgment and decree in appeal through his pairvikar but he could not meet his pairvikar when he came to Katihar. The plea of financial paucity and delay in collecting the relevant papers has also been made.

Learned counsel for the appellant has referred to the averments made in the interlocutory application and has submitted that as the appellant had no knowledge of the impugned judgment and decree as he was residing outside, the sufficient cause has been made out for condonation of delay in filing the suit.

Learned counsel for the respondent no. 2, however, has emphatically submitted that the appellant has accepted to have the knowledge of the impugned judgment and decree in appeal through his pairvikar but has omitted to disclose the date of knowledge and has come out with the specious plea of lack of knowledge as well as paucity of fund and relevant papers which has been concocted for the purpose of condonation of delay. It has also been submitted that from the perusal of the certified copy of the impugned judgment and decree in appeal, it transpires that the certified copies of the same were obtained as far back as on 25.06.2008 which fact itself falsifies the plea of lack of knowledge.

After considering the submissions and perusal of the



judgments of both the courts below as well as the averments made in the interlocutory application (I.A. No. 1690 of 2016), it is manifest that the impugned judgment and decree in appeal was passed long back on 26.05.2008 and the certified copies of the same were also obtained on 25.06.2008. It is not the case of the appellant that after the dispute with his brother leading to filing the criminal case in the year 2007, the appellant left the pairvi in the appeal as well and had left keeping the track of said appeal. Though, the impugned judgment was passed on 26.05.2008 but the appellant has not disclosed the date on which he became aware of the same. It is nowhere the case on behalf of the appellant that after leaving his native village he had not contacted his lawyer appearing in the appeal on his behalf or his pairvikar in the said appeal. These facts lead to inevitable conclusion that the explanation for condonation of delay has been furnished in a casual manner even though there is inordinate delay in filing this appeal. Keeping in view the principles laid down by the Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649**, this Court comes to the conclusion that the appellant has failed to establish sufficient cause for condonation of delay of 1 year, 5 months and 8 days in filing this appeal.

The interlocutory application (I.A. No. 1690 of 2010) is,



accordingly, dismissed.

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

(V. Nath, J)

Devendra/-

U			
---	--	--	--

