

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.265 of 2014

1. Chande Sahni, son of Late Subba Sahni
2. Manager Sahni, son of Late Subba Sahni
Both resident of village Mahisadh, P.O. Belahi Nilkanth, P.S. Runni Saidpur,
District Sitamarhi

... .. Appellants

Versus

1. Budhan Sahni, son of Late Jagmohan Sahni, resident of village Mahisadh,
P.O. Belahi Nilkanth, P.S. Runni Saidpur, District Sitamarhi
2. Niranjan Sahni, son of Late Ekwali Sahni
3. Srichand Sahni, son of Late Ekwali Sahni
4. Janak Sahni, son of Late Gudari Sahni
2 to 4 are resident of village Mahisadh, P.O. Belahi Nilkanth, P.S. Runni
Saidpur, District Sitamarhi
5. Kusumi Devi, daughter of Late Ekwali Sahni and wife of mahendra Sahni,
resident of village and post office Parsauni, P.S. Belsand, District Sitamarhi
6. Ramjharia Devi, daughter of Late Ekwali Sahni and wife of Brijnandan
Sahni, resident of vilalge Ganga Dharampur, P.S. Tariyani, District Sheohar

... .. Respondents

Appearance :

For the Appellants : Mr. Rajesh Kumar Sinha
For the Respondents : Mr. Alok Kumar Jha

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

14 21-11-2017 Heard learned Counsel for the appellants and learned
Counsel for the respondents.

This appeal is time barred. There is delay of more than
1165 days in filing of the present second appeal.

The decree was passed by the learned appellate court on
21.07.2011, whereas, the present second appeal came to be filed
on 27.09.2014.

I. A. No. 8939 of 2015 has accordingly been filed for
condonation of delay.



The explanation, which has been given in paragraph nos. 4, 5, 6, 7, 8 and 9 of the limitation petition, are as follows, which, according to the appellants, prevented them from approaching the Court within time:-

“4. That the appellants are fishermen and they went out of Bihar at Mathura in U.P. in search of their livelihood.

5. That the appeal before the Lower Appellate Court continued for a pretty long time and the counsels for the respondents in the Appellate Court below left pairavi in the case and on 18.06.2011 the order sheet of the Lower Appellate Court was shown to Shri Harihar Prasad Yadav, Advocate, who endorsed on the order sheet that he had no instruction in the matter and accordingly the hearing of the appeal was concluded ex parte and the impugned judgment and decree was passed on 21.07.2011.

6. That the appellants had no notice of hearing of the appeal and the knowledge of passing of the impugned judgment and decree passed by the Lower Appellate Court.

7. That in August 2014, when the appellants came to their village they were informed by one Shri Ram Narayan Sah about passing of the judgment and decree by the Lower Appellate Court.



8. That a requisition for a copy of the impugned judgment and decree was filed on 08.08.2014 and the same were delivered on 23.08.2014 and the appellants could get the copies on 19.09.2014.

9. That the appellants immediately rushed to Patna for filing the Second Appeal and engaged Shri V. R. P. Singh, Advocate, for filing the appeal on 22.09.2014.”

Learned Counsel for the appellants has relied on Supreme Court’s decisions, in the cases of **M/s G. M. G. Engineering Industries and Others v. M/s ISSA Green Power Solution and Others (AIR 2015 SC 2675)** and **B. S. Sheshagiri Setty and Others v. The State of Karnataka and Others**, reported in **(2016) 2 SCC 123**, to submit that this is a fit case for condonation of delay.

It is his plea that appeal has been virtually decided by the Court below *ex parte* in the absence of any *pairvi* being done by learned Counsel engaged by the appellants to conduct the case on their behalf before the Court below. He submits that in such circumstance, in the interest of justice, the delay in filing the present appeal deserves to be condoned.

I am not convinced with the submissions so advanced on behalf of the appellants since the reasons assigned in the



application seeking condonation of delay are not adequate to satisfy the Court that the appellants had sufficient cause for not preferring the appeal within the period of limitation prescribed.

Indisputably, the appellants were noticed by the Court below, pursuant to which they had appeared by engaging learned Counsel. The decision of the Court below cannot be said to be *ex parte* on the basis of the materials on record. The decision of the Supreme Court, relied on by learned Counsel for the appellants, in the case of **M/s G. M. G. Engineering Industries** (supra), has no application in the present case since that was a case where the decree was passed *ex parte*. The facts of the case, in the case of **B. S. Sheshagiri Setty** (supra), relied on by learned Counsel for the appellants, were entirely different.

Considering the above, the delay of 1165 days in filing the second appeal cannot be condoned. I. A. No. 8939 of 2015 is accordingly dismissed.

As consequence thereof, the appeal also stands dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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