

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No. 187 of 2011

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Smt. Kaushalaya Devi W/O Rajendra Singh Mauza Chaubey Tola, P.S.
Chanpatia, District West Champaran

... .. Appellant/s

Versus

Sri Ram Balak Raut Sri Bhikhari Raut Mauza Jaitia Tola Harpur, P.S.
Chanpatia, District West Champaran

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Nand Kumar Singh, Advocate
For the Respondent/s : Mr. Shiv Kumar Dwivedi, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

21 21-10-2022

Re. I. A. no. 3850 of 2018 & I. A. no. 3851 of 2018

Heard learned counsel for the appellant and learned
counsel for the respondent.

I. A. no. 3850 of 2018 has been filed by the son of the
sole appellant stating therein that the sole appellant died on
9.4.2016 and praying that she be substituted by legal heirs
mentioned in the petition. Further I. A. no. 3851 of 2018 has
been filed under section 5 of the Limitation Act praying for
condoning the delay in filing of the substitution application.

It is submitted by learned counsel for the appellant
that the sole appellant died on 9.4.2016. He has filed I. A. no.
3850 of 2018 praying for substitution of the sole appellant by
her legal heirs ie her four sons, two daughters as also her
husband. It is further submitted that the sole appellant was



continuously suffering from several diseases. In course of her treatment huge expense was incurred by her legal heirs for which they also had to take loan from the local residents and the villagers. As such the family was reeling under severe financial crisis. Thereafter the husband of the sole appellant fell ill and on recovery from illness, in the month of January 2018, he came to Patna in the first week of February 2018 and got the substitution petition filed on 11.5.2018 together with a petition for condonation of delay. It is submitted by learned counsel for the appellant that the delay in filing of the substitution petition of the sole appellant has been properly explained in the limitation petition. The appellant belongs to a very poor family and the heirs are fighting the suit for their survival with respect to a very small piece of land. As such it is prayed that the delay of about 19 months in filing of the substitution petition of the sole appellant be condoned, the sole appellant be substituted and the appeal be heard and decided on its own merits.

The application is opposed by learned counsel appearing for the respondent. Learned counsel for the respondent submits that the instant appeal arises from a land acquisition case and the suit was decreed on contest by judgment dated 30.11.2010 and decree dated 13.12.2010. It is



against the said judgment and decree that the instant appeal was preferred but after an unexplained delay of 9 months. It is further submitted that I. A. no. 2263 of 2013 was filed on behalf of the appellant under section 5 of the Limitation Act praying for condonation of delay in filing of the main appeal. A reply was filed to the said application on behalf of the respondent wherein in paragraph no.4 it was categorically stated by the respondent that the sole appellant had died in the month of April 2016. It was only thereafter that the substitution petition was filed. It is incorrect to state that the appellant was suffering from several ailments and was undergoing treatment. No documentary evidence has been given for the same. So far as the statement of the appellant reeling under financial crisis is concerned, it is submitted that the same is a false and incorrect. The husband of the deceased appellant is not only a literate person but is having huge landed property and bank balance having retired from the post of Block Education Extension Officer in the year 1997. It is further submitted that even the sons and daughters of the sole appellant are all major having their own earnings.

Heard learned counsel for the parties.

Having heard learned counsel for the parties and



having gone through material on record it transpires that the sole appellant having died on 9.4.2016, the application (I. A. no. 3850 of 2018) has been filed for substitution only on 11.5.2018 that is after a delay of more than 19 months. In explaining the delay in filing of the substitution petition, it has been submitted by learned counsel for the appellant that the sole appellant who was aged about 65 years at the time of filing of the appeal in the year 2011 suffered from several diseases and died on 9.4.2016. It has further been stated that huge expense was incurred in her treatment and as a result of the financial crisis the heirs did not have money to bear the expenses for filing of this substitution application. Further the husband of the applicant also fell ill and on recovery from illness in the month of January 2018, he came to Patna in the first week of February 2018 and thereafter the substitution petition as also the limitation petition was filed.

The relevant paragraph nos. 4, 5 and 6 of the application for condoning the delay in filing of the substitution petition is being quoted herein below for ready reference:

“4. That at the time of filing, of FA. No. 187/2011 the appellant Smt. Kaushalaya Devi was aged about 65 years and continuously suffered from several disease under which she lastly died on 09.04.2016. After death of appellant Smt. Kaushalaya Devi, her last rites



under Hindu Religion rituals was performed by the legal heirs who are the present applicants.

5. That in course of treatment Smt. Kaushalaya Devi a huge money was expense for which his legal heir also taken loan from local residents of concerned village. In such a situation they were undergoing a severe financial crisis and had not enough money to bear the expenses for filing this substitution application.

6. That thereafter husband of the appellant Sri Rajendra Singh fell ill and recovered from illness in the month of January, 2018 and then Pairvikar along with Rajendra Singh came to Patna in first week of February, 2018.”

It may be stated here that in his reply filed to the said I. A. no. 3851 of 2018, the respondent states in paragraph no. 13 to the following effect:

“13. That the statement made in Para No.5 and 6 of the Interlocutory application are out and out wrong and false and the Respondent denied the same. The husband of the deceased appellant is a literate person having sufficient background like huge landed property and bank balance, retired form the post of Block Education Extension Officer in the year 1997. The sons and daughters are also major having their own earning. As such it is false to say that due to lack of money aforesaid substitution petition could not be filed within time. The ground of illness of Sri Rajendra Singh is quite



false and concocted.”

It may be stated here that no document whatsoever has been filed on behalf of the appellant in support of his statements made in paragraph nos. 4, 5 and 6 quoted hereinabove. The appellants have not brought on record any prescription or any other document in support of the illness and treatment of the sole appellant which as per their case led to the huge financial crisis, no receipts of the expenses incurred nor any document in support of the treatment of the husband of the appellant. Further from perusal of paragraph no.13 to the reply of the respondent also quoted above, it transpires that not only the husband of the deceased is a literate person but it has been stated therein that he retired in the year 1997 as a Block Education Extension Officer and has huge landed property and bank balance. It has further been stated that the sons and daughters are also major having their own earning.

The above statement made by the respondent in paragraph no.13 with respect to the literacy and financial status of the appellant has not been denied by the appellants.

The Hon'ble Supreme Court in its judgment in the case of **Esha Bhattacharjee vs. Raghunathpur Nafar Academy [(2013) 12 SCC 649]** has held as follows:

“21.9. (ix) 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 name of liberal approach.

21.10. (x) 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.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:-

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for



achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

It may also be pointed out here that the instant appeal preferred under section 54 of the Land Acquisition Act 1894 arises out of the judgment passed in Land Acquisition Case. In the reference made under section 30 of the Land Acquisition Act by the District Land Acquisition Officer, West Champaran, Bettiah for determination of entitlement to receive compensation amount on the basis of objection petition filed by the petitioner-appellant Kaushalya Devi against the award no. 20 of Rs.336/- preferred in the name of the awardee ie respondent Ram Balak Raut was dismissed on contest.

In view of the facts and circumstances of the case, including the contents of the applications as also the reply together with the submissions made, this Court is of the opinion that in absence of any supporting documents having been filed on behalf of the appellants with respect to the illness of the sole appellant, the expense incurred in her treatment as also the illness of the husband of the sole appellant and especially the fact that the categorical statement made in paragraph no.13 of the reply filed by the



respondent has not been denied, in view of the ratio of the judgment of the Hon'ble Supreme Court in the case of Esha Bhattacharjee (supra), this Court is of the opinion that the appellant has not made out a case for condonation of delay for substitution of the sole appellant and the same is fit to be dismissed.

I. A. no. 3850 of 2018 and I. A. no. 3851 of 2018, both stand rejected.

Thus the appeal itself stands dismissed.

(Partha Sarthy, J)

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