

HIGH COURT OF ORISSA : CUTTACK
RSA NO.82 OF 2008

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned Additional District Judge, Malkangiri in RFA No.3 of 2006 in confirming the judgment and decree passed by the learned Civil Judge (Jr. Division), Malkangiri in T.S. No.8 of 1999.

.....

Mangalu Pujari

:::: Appellant.

-:: VERSUS ::-

Mutiram Pujari

:::: Respondent

**Advocate(s) who appeared in this case by hybrid arrangement
(virtual/physical) mode.**

For Appellant

... M/s. P.K. Rath,
Miss. S. Das, P.K. Satpathy,
R.N. Parija, A.K. Rout &
M.M. Rout
(Advocate).

For Respondents

... -----

**CORAM :
MR. JUSTICE D.DASH**

Date of Hearing: 08.12.2022 :: Date of Judgment: 23.12.2022

D.Dash, J.

The Appellant, by filing this Appeal under section 100 of the Code of Civil Procedure (for short, 'the Code'), has assailed the order dated 17.11.2007 passed by the learned Additional District Judge, Malkangiri in R.F.A. No.3/2006.

The present Appellant being the aggrieved Defendant in Title Suit No.8/1989 of the Court of Civil Judge, (Junior Division), Malkangiri, had filed the Appeal under section 96 of the Code in challenging the judgment and decree passed therein. The Memorandum of Appeal having been presented in the year 2006 in challenging the judgment and decree passed by the Trial Court in the year 1999, the Appellant has filed an application under section 5 of the Limitation Act for condonation of delay in filing the Appeal. The First Appellate Court has rejected the prayer for condonation of delay and accordingly, the First Appeal has been dismissed.

2. Learned counsel for the Appellant submits that the Appellant is a rustic person and he having not known the result of the suit had not taken the step in challenging the decision of the Trial Court and he was also not aware of the legal provisions as to limitation etc. She, therefore, submits that the First Appellate Court is not right in saying that the Appellant was not prevented by sufficient cause in filing the Appeal. She therefore urges for admission of this Appeal to answer the above as the substantial question of law.

None appeared on behalf of the Respondent despite notice and opportunity.

3. Keeping in view the submissions made, I have gone through the order dated 17.11.2007. As it appears from the judgment of the Trial Court, this Appellant was the sole Defendant therein and he was contesting the suit by engaging lawyer from his side and he had also examined the witnesses during the trial and had proved the documents in support of his claim. The Trial Court having decreed the suit by judgment dt.03.09.1999, the First Appeal had been filed

in the year 2006 after a long delay of more than five years. The First Appellate Court on going through the averments taken in the petition supported by affidavit had arrived at a conclusion that the delay of such period has not been properly explained. The First Appellate Court in arriving at such a conclusion has taken the view that although so many reasons have been assigned in explaining the delay in filing the Appeal, no such material in support of the same was filed. The delay being for a period of five years, the Appellant was under legal obligation to explain it properly in showing that he was prevented by sufficient cause for not filing the Appeal in time and that too for a long period of five years.

4. It is the settled principle of law that in such matter of condonation of delay, the approach of the Court should not be pedantic and the Courts should always lean in favour of the deciding the lis on merit and not on technicalities. But at the same time caution remains that when for the inaction of a party for a long period, a right has accrued in favour of the successful party of the litigation, the Court has to make a balance between the two and also take into account the sufferings and hardship that the successful party in that event in coming to the arena of litigation again. When the delay is too long the explanations have to be plausible and acceptable with supporting materials.

5. Testing the facts and circumstances of the case on the anvil of the settled position of law, I do not find that the Appellate Court did commit any mistake in refusing to condone the delay for more than five years when this Appellant being the Defendant was very much contesting the suit by filing the written statement and leading

the evidence, by saying that the Appellant has not shown to have been prevented by sufficient cause in not taking the step of filing the Appeal for more than five years. Thus this Court is not in a position to accept the submission of the learned Counsel for the Appellant that there arises the substantial question of law meriting admission of this Appeal.

6. In the wake of aforesaid, the Appeal stands dismissed. No order as to cost.

Himansu

