

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA NO.295 OF 2007

Dhana Khilla

.... ***Appellant***
Mr. J.R. Dash, Advocate

-versus-

***Smt. Bimala Samarliani &
Samiliani***

.... ***Respondent***

CORAM:

MR. JUSTICE D.DASH

ORDER

05.05.2022

Order No.

I.A. NOS. 111, 112 & 113 OF 2022

17. 1. This matter is taken up through hybrid arrangement (virtual/physical) mode.
2. These Applications have been filed for substitution of the legal representatives of sole Respondent by setting aside the abatement and condoning the delay in filing the application for setting aside the abatement.
3. The Appellant having filed this Appeal under Section-96 of the Code of Civil Procedure (for short 'the Code') has assailed the judgment and decree passed by the learned District Judge, Koraput in RFA No.02 of 2006.

By the same, the suit filed by the Appellant as the Plaintiff seeking direction to the Respondent (Defendant) to delivery of vacant possession of the suit site to him by demolishing the construction made over there has been dismissed and the Appellant (Plaintiff) has been non-suited.

4. The sole Respondent is stated to have expired on 13.06.2016 leaving behind her son as her legal representative. These Applications have been filed on 25.01.2022. The Appellant having not taken steps for substitution of the legal representatives of the Respondent by 25th of April, 2016 and then

having not also taken any step by 25th June, 2016 for setting aside the abatement of the Appeal on account of death of the Respondent (Defendant) now filed those applications for substitution of the legal representatives of Respondent by setting aside the abatement of the Appeal seeking condonation of delay of more than five years and two months.

5. Keeping in view the submissions made, the averments taken in the Applications being perused, it is seen that the absence of the Appellant (Plaintiff) at his native place has been projected as the sufficient cause standing on the way of taking timely steps for substitution of the legal representatives of the Respondent. It is stated that the Appellant (Plaintiff) being a labourer was working in the State of Andhara Pradesh and as such was ignorant about the death of the Respondent (Defendant) and only when the order of stay stood vacated in view of the judgment of the Hon'ble Apex Court, he come to know the same and sprang into action. The Applications are not supported by any document. When it reveals from record that the Appellant (Plaintiff) had obtained the certified copy of the order passed in the Execution Proceeding No.01 of 2006 on 23.08.2021, he has filed these Applications after five months thereafter which shows that even after knowing about all the details as to what steps are to be taken; he has not shown due diligence. It is also not stated that in which place he during such long period was working that he during the period of long five years never come to his village. The Appellant (Plaintiff) and Respondent (Defendant) are neighbours and to say that the Appellant (Plaintiff) was not aware of the death of the Respondent (Defendant) is per se not believable that to when both are running with the litigation for

such a long period. In the facts and circumstances, the explanation for such long delay and the sufficient cause projected for the same as to have prevented the Appellant (Plaintiff) from filing the Application for setting aside the abatement of the Appeal in view of the death of the legal representative of the Respondent (Defendant) within time are not at all plausible.

6. In view of the aforesaid, this Court declines to condone the delay in setting aside the abatement of the Appeal.

7. As a result, the Interlocutory Applications are hereby rejected.

8. This I.As. stand dismissed.

**(D. Dash),
Judge.**

ORDER
06.05.2022

R.S.A. NO.295 OF 2007

Order No.

18. 1. Consequent upon the orders passed in I.A. Nos. 111, 112, & 113 of 2022, this Appeal stands dismissed.

No order as to cost.

**(D. Dash),
Judge.**

Narayan