

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO. 59 OF 2017

Kanak Maharana

....

Appellant

Mr. G.K. Behera, Advocate

-versus-

***Sri Sri Sri Madan Mohan
Mahaprabhu Bijie & Others***

....

Respondents

Mr. A.K. Mishra, Advocate.

CORAM:

MR. JUSTICE D.DASH

ORDER

23.12.2022

R.S.A. NO. 59 OF 2017

&

MISC. CASE NO.81 OF 2017

Order No.

05.

1. This matter is taken up through hybrid arrangement (virtual/physical) mode.

2. The Appellant having filed this Appeal under section-100 of the Code of Civil Procedure, 1908 (for short, the Code on 14.02.2017), seeks to assail the judgment and decree passed by the learned Adhoc Addl. District Judge (FTC), Chatrapur in RFA No.07 of 2007 (09 of 2006 of GDC).

One Bhaskar Maharana was the original Defendant before the Trial Court in Title Suit No.96 of 1999. In view of death of said Bhaskar, the original Defendant during the suit, this Appellant and her two major sons have been arraigned and they contested the suit filed by the Respondent No.1 as the Plaintiff.

The suit had been filed by the Respondent No.1 (Deity) as the Plaintiff claiming the relief of declaration of right, title and interest of the Respondent No.1 (Plaintiff-Deity) and recovery of possession of the same from the hands of the Appellant and

Respondent No.2 to 4 (Defendants) along with the payment of damage.

It is pertinent to state at this stage that the suit having been decreed by the Trial Court; this Appellant being aggrieved by the Trial Court's verdict had carried the First Appeal and her sons, the other Defendants had not joined with her. The First Appeal has been dismissed.

3. The First Appellate Court having passed the judgment on 5th January, 2009 and drawn the decree on 20th January, 2009; the Memorandum of Appeal has been presented before this Court on 14th February, 2017.

In view of that, there being delay of 2871 days (7 years 10 months and 16 days); the Appellant has filed an Application under section-5 of the Limitation Act for condonation of delay.

4. Heard learned Counsel for the Appellant and the learned Counsel for the Respondent No.1.

5. Learned Counsel for the Appellant reiterating the averments taken in the Application submitted that due to dispute in the family of the Appellant and as her sons quarrel amongst themselves, the Appellant remained under stress and became hypertensive and those aggravated her other permanent ailments. He further submitted that the Counsel for the Appellant due to his old age did not inform the result of the Appeal and only sometime, in the month of October, 2016 when the villagers under the leadership of Pravakar Panigrahi questioned the possession of the suit house by the Appellant, on enquiry, the Appellant could ascertain that she has lost the First Appeal way back in the year, 2009 and thereafter taking all such steps, she has presented the Memorandum of Appeal before this Court. He

therefore, submitted that the delay even though is for a long period of 2871 days, as the Appellant was prevented by sufficient cause during the entire period and thus could not file the Appeal in time, the same need be condoned in the interest of justice and for a decision in the lis on merit rather than on technicality.

6. Learned Counsel for the Respondent no.1 inviting attention of this Court to averments taken in the objection submitted that the averments taken in the Petition are false and those have been coined for the purpose. She further submitted that when the Second Appeal has been filed after lapse of 7 years 10 months and 16 days, the Appellant has not filed a scrap of paper relating her treatment along with the Application under section-5 of the Limitation Act. She therefore, submitted that for such long delay in presenting the Memorandum of Appeal, a valuable right having accrued to the Respondent No.1(Plaintiff-Deity), who has been successful before two forums, the same should not be taken away by viewing the matter liberally in favour of condonation, when the facts and circumstances as narrated in the Application as also what have been submitted by the learned Counsel for the Appellant do not show any such sufficient reason standing on the way of the Appellant preventing her from filing the Appeal for a long period of 7 years 10 months and 16 days.

7. Keeping in view the submissions made, I have gone through the averments taken in the Application as well as the averments of the objection filed by the Respondent No.1.

Admittedly, the suit having been decreed in January, 2006. It is this Appellant, who had filed the First Appeal in the Trial Court, she was contesting the suit with her sons

(Respondent Nos. 2 to 4) by filing joint written statement. It reveals that after the disposal of the suit, the Appellant (Defendants) alone pursued the First Appeal. The First Appeal has been disposed of on contest by judgment and decree dated 05.01.2009 and 20.01.2009 respectively.

8. The very averment taken in the Application under section-5 of the Limitation Act is that the Appellant could only know about the result of the Appeal sometime in the month of October, 2016 is pur se not unbelievable and not-acceptable. This Appellant being the Appellant before the first Appellate Court having pursued the First Appeal till its end; it is unexpected on her part that she would remain silent from beginning of the year 2009 after filing the First Appeal till October, 2016 for more than 10 years. It is further stated that the sons of the Appellant did not bother about her and she could not keep contact with the Lawyer, who also did not inform her about the result. Such statements are vague and cannot be taken as true and correct. The Appellant at the time of presentation of the Memorandum of Appeal was not that old and she was 62 years of age. As regards prolonged illness, the statement again being vague, the same does not find support from any other fact or document. The Appellant (Defendant No.1) having presented the Memorandum of Appeal after 7 years and 10 months has not bothered to annex any medical paper in support of her illness nor has she filed any document so as to provide support to the factum disturbance in the family preventing for quite a long period.

In view of the aforesaid, I am of the considered view that the Appellant has not been able to show that she had been

prevented by sufficient cause for a long period of 7 years 10 months and 16 days in filing the Second Appeal.

9. It is true that in the Court's in the matter of condonation of delay are required to take a liberal view in instead of making pedantic approach so as to see that the lis is decided on merit other than on technicality in serving the interest of justice.

However, the word of caution in such a matter of long delay remains that the Court while taking such a view should not shut its eyes to the fact that the adversary who has been successful in the litigation in the last forum and in whose favour a valuable right as accrued, in the anxiety of deciding the litigation on merit, the same should not be lightly taken away as that may cause serious injustice to the adversary.

In the given case, the delay is for 7 years 10 days and 16 days; the facts and circumstances which have been projected by the Appellant in showing that sufficient causes stood on the way of the Appellant preventing her from filing the Second Appeal in time and that too after such delay are wholly unbelievable and unacceptable. The Trial Court having decreed the suit, the Appellant (Defendant No.1) had filed the First Appeal. That having been dismissed, now the concurrent finding of the courts below are under challenge in this Appeal filed after 7 years 10 days and 16 days. That finding of the trial court as confirmed in First Appeal has been holding the field for all these years and the subject matter as also the position of the successful party undergoing changes are not altogether ruled out. To say, that the Appellant had no knowledge about the result of the First Appeal in the year, 2009 and she could learn about the same only in October, 2016 is nothing but falsehood, when the fact remains

that she alone was pursuing the First Appeal and as per her own case, she has a house over the suit land and in spite of that, her maintaining silence does not appeal to the judicial mind and conscience. The other statements relating to illness etc. are all vague receiving no support from any other fact or materials being not provided in that regard.

10. For all the aforesaid, this Court finds that the explanations offered by the Appellant (Defendant No.1) for such long delay of 7 years 10 months and 16 days in filing the Appeal are not at all acceptable much less to say plausible. Thus it is held that no such sufficient cause(s) at any point of time during all these period of 7 years 10 days and 16 days prevented the Appellant and stood on the way in not filing this Second Appeal within the time and after such long lapse of time.

10. In the result, the Application stands rejected. Consequent upon the rejection of the Application under section-5 of the Limitation Act refusing to condone the delay in filing the second Appeal; this Court finds no option but to dismiss the Appeal. There shall however, no order as to cost.

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