

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.393 of 2017

Jasobanti Sahu

...

Appellant

Mr.Bibekananda Bhuyan, Advocate

-versus-

Sulochana Sahu & Others

...

Respondents

Mr. S.C. Puspalka,
Advocate

CORAM:

MR. JUSTICE D.DASH

ORDER

26.07.2022

R.S.A. No.393 of 2017

&

Misc. Case No.730 of 2017

Order No.

03. 1. This matter is taken up through hybrid arrangement (virtual/physical mode).
2. The Appellant, who was the Defendant in the Trial Court and the Respondent no.1 before the First Appellate Court has filed this Appeal under section 100 of the Code of Civil Procedure (for short, 'the Code') in assailing the judgment and decree passed by the learned Additional District Judge, Boudh in R.F.A. No.12 of 2010. By the same the First Appellate Court has allowed the Appeal filed by the Respondent Nos.1 to 3 under section 96 of the Code in part.
2. The judgment in the First Appeal being passed on 12.03.2011 the decree came to be drawn on 08.04.2011. The Memorandum of Appeal has been presented on 07.11.2017. In view of the above, the Appellant has filed an Application under section 5 of the Limitation Act praying for condonation of delay the delay of 2322 days in filing this Second Appeal.

The Office note is, however, to the effect that the delay is for 2286 days.

3. Learned counsel for the Appellant reiterating the averments taken in the application submits that although the delay is for quite a long period, the Appellant is in no way responsible for the same. He submitted that the Appellant having decided to prefer the Second Appeal had handed over the brief to a Counsel at Cuttack and he having fallen ill and ultimately passed away; the Second Appeal was not filed in time. He submits that only when the Appellant received the notice from the Executing Court, he could know about all these facts that no Second Appeal had been filed before this Court for the reason of prolonged illness of the learned Counsel, who had been entrusted to do the needful in the matter. He, therefore, prays for condonation of delay, as according to him, the Appellant herein was prevented by sufficient cause in filing the Appeal for all these period.

4. Learned counsel for the Respondents placing the averments taken in the Objection so filed submits that the delay is for six years, three months and six days huge. According to him, for non-filing of the Appeal during such long period, a valuable right has accrued in favour of the Respondents and it is not unlikely that in the meantime the properties must have undergone several changes with developments and so also the parties must have altered their position in relation to the properties. He submits that here the Appellant cannot said to have offered reasonable and acceptable explanation for the delay and merely saying that she having entrusted the matter to the Counsel, had no further role to play for such long period, won't suffice the purpose. He submits that the long silence of the Appellant up-till the

receipt of the notice in the Execution Proceeding without taking any interest in obtaining information as regards the position of the Appeal, itself, exposes gross negligence on the part of the Appellant. He, therefore, urges for rejection of the prayer for condonation of delay of such a long delay.

5. Keeping in view of the submissions made, I have carefully gone through the averments taken in the Application as well as the Objection.

The Appellant although has stated that the file had been handed over to the Counsel at Cuttack and he having remained ill for a long period when ultimately passed away, the Appeal had not been filed in time, yet at no place, it has been whispered that the Appellant had even made any attempt to collect any such information with regard to the status of the Second Appeal for such long period of more than six years.

Although ordinarily in the matter of condonation of delay, the Court leans to have a liberal approach yet when the delay is for years together and too long; the caution remains that the Court should be satisfied that the explanations are wholly plausible.

The Appellant here having remained silent for a such a long period after handing over the brief to the Counsel, she cannot be said to have been diligently pursuing the litigation. The explanation here appears to be very casual and usual. Such explanation without any other details is not acceptable. Thus the Appellant is found to have miserably failed to give any cogent reasons, sufficient to condone such huge delay of six years, three months and six days.

For all the aforesaid, this Court is of the view that it is not a fit case for condonation of delay of six years, three

months and six days in presenting the Memorandum of Appeal.

6. In that view of the matter, the Application for condonation of delay under Section 5 of the Limitation Act stands rejected.

7. The I.A. is accordingly dismissed.

(D. Dash)
Judge

ORDER
26.07.2022

Order No.

R.S.A. No.393 of 2017

04. 1. This matter is taken up through hybrid arrangement (virtual/physical mode).
2. Pursuant to the above order passed in the I.A, the Appeal stands dismissed. No order as to cost.

(D. Dash)
Judge

