

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.309 of 2019

(From the order dated 19.09.2018 passed by the learned District Judge, Bhadrak in R.F.A. No.42 of 2017)

State of Orissa and another

....

Appellants

-versus-

Bhaskar Dutta

....

Respondent

Advocate(s) appeared in this case:-

For Appellants : Ms. S. Mishra, A.S.C.

For Respondent : Mr. S.P. Mishra, Senior Advocate

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

18th July, 2022

B.P. Routray, J.

1. Present appeal at the instance of the State authorities, viz., the Collector, Bhadrak and the Tahasildar, Chandbali is directed assailing order dated 19.09.2018 of the learned District Judge, Bhadrak passed in R.F.A. No.42 of 2017.

2. The substantial question involved in the present appeal is to the limited extent that, whether the lower appellate court is justified in rejecting the appeal on the ground of delay?

3. Before dealing with the substantial question, the facts stated in brief are to the effect that, the present Respondent, namely, Bhaskar Dutta filed T.S. No.11/98 in the court of the learned Civil Judge (Sr. Divn.), Bhadrak praying for declaration of right, title, interest and confirmation of possession as well as permanent injunction over an extent of land measuring area Ac.4.40 decimals of mouza-Farshibandha in the district of Bhadrak. His claim for declaration was based on the order passed in favour of his late father in Suo Moto Case bearing No.1562/1980 under Section 4(2) of the Orissa Land Reforms Act, 1960 and further, his continuous and uninterrupted possession over the suit land. As per his (Plaintiff) claim, the Revenue Officer has settled the suit land in favour of his father declaring him to be a rayat subject to payment of premium fixed. But in the last settlement operation, taking advantage of absence of the Plaintiff in the village, the suit land was recorded as 'Gochar' and 'Abadyajogya Anabadi' in M.S. Khata No.159.

4. The State-Defendants were set ex parte and did not contest the case. Accordingly, ex-parte decree was passed in favour of the Plaintiff (the present Respondent) granting the reliefs prayed by him in the suit. The decree was passed on 22.05.2009 by the learned Civil Judge (Sr. Divn.), Bhadrak.

5. The first appeal being R.F.A. No.42/2017 was filed before the learned District Judge, Bhadrak after around 9 years from the date of decree, i.e. in the year 2017, by the Defendants, who are the present Appellants. Along with the appeal, a petition under Section 5 of the

Limitation Act was also filed praying to condone the delay. However, the learned District Judge, Bhadrak refused to condone such delay in filing the appeal and dismissed the appeal on the ground of limitation vide the impugned order dated 19.09.2018. The said order of the learned District Judge, Bhadrak is the subject matter of challenge in the present appeal.

6. Ms. S. Mishra, learned Additional Standing Counsel for the Appellants submitted in challenging the impugned order of the learned District Judge, Bhadrak that the delay on the part of the Appellants is neither intentional nor deliberate, but as a result of missing of the date by the concerned Government pleader. She further contended that the Appellants being the State authorities, a liberal approach should be taken in their favour to condone the delay in filing the appeal and the matter should be remanded back to the learned trial court for fresh adjudication of the suit on merit particularly keeping in view the large extent of land involved in the suit. In support of her contention, Ms. Mishra relied on the decisions of the Supreme Court in the case of *Shakuntala Devi Jain vs. Kuntal Kumari and others*, AIR 1969 SC 575, *G. Ramegowda, Major and others vs. Special Land Acquisition Officer, Bangalore*, (1988) 2 SCC 142, *State of Haryana vs. Chandra Mani and others*, (1996) 3 SCC 132. She further relied on the decision of this Court in the case of *Giridhari Pradhan and others vs. P.S. Prasad* (CMP No.802 of 2019 disposed of on 06.12.2021).

7. Conversely, Mr. S.P. Mishra, learned Senior Advocate for the Respondent supported the impugned order of the learned District

Judge, Bhadrak by submitting that the Appellants have failed to account for such huge delay in preferring the appeal against the decree of the learned Civil Judge (Senior Division), Bhadrak. As per his submission, the grounds taken for condoning the delay before the first appellate court are neither satisfactory nor specific and therefore, the order of the first appellate court does not warrant any interference by this Court. He further relied on the decisions of the Supreme Court rendered in (2012) 3 SCC 563 (*Postmaster General and others vs. Living Media India Limited and another*), (2012) 5 SCC 157 (*Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai*), (2014) 4 SCC 108 (*Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu*), (2014) 11 SCC 192 (*State of Assam and others vs. Susrita Holdings Private Limited*), 2022 SCC OnLine SC 249 (*Surjeet Singh Sahni vs. State of U.P. and others*).

8. Admittedly there is delay of 2912 days in filing the first appeal before the learned District Judge, Bhadrak by the Appellants. The cause of delay explained by the Appellants in their petition under Section 5 of the Limitation Act, as revealed from the certified copy produced by Ms. S. Mishra, learned A.S.C. for the Appellants in course of hearing, are to the effect that during last part of the month of January, 2009, there was heavy rain for some days for which some portion of the roof of G.P. office was damaged and due to drop of rain water from the roof, daily diary of the G.P. office was damaged and as such no steps could be taken in the original suit. The relevant

paragraph of the limitation petition is reproduced here-in-below for better appreciation.

“That, the original suit is in the year 1998 the defendants were set ex-parte on dt.9.9.2008 and the case was posted to 15.5.2009 for ex-parte hearing and on the same day the affidavit evidence was taken and the documents have been marked exhibits but the learned court below did not give opportunity to the defendants to cross examine the plaintiff and the order sheet does not reflect that the defendants declined to cross examine. More to say towards last part of the month of January 2009, there was heavy rain for some days and due to the rain the some portion of roof of G.P. Office was damaged and the rain water was dropped from the roof for which the diary of G.P. office and some other papers were damaged, as such no steps were taken in the original suit. That the appellants No.2, the Tahasildar, Chandbali obtaining the order of Honourable High Court in W.P.(C) No.18423/2015 sent a letter No.2109 dt.1.5.17 to the Collector, Bhadrak with a prayer for permission of filing of appeal in the court of Dist. Judge, Bhadrak against the judgment and decree in T.S. No.11/98 passed by Civil Judge, Senior Division, Bhadrak. The learned Collector, Bhadrak asked to learned G.P. for his views in this context. The learned G.P. had given the views. After considering the documents and view of the G.P. the learned Collector give the permission to file the appeal. After that the appeal memo was prepared and had given to the Collector for approval. After approval of the appeal memo the Appeal has been filed. As such they delay has been caused in filing of this appeal.”

9. The present Respondent in his objection to the said limitation petition before the learned District Judge, Bhadrak has stated the facts in detail against the statements of the Appellants as false and unclear. As it is seen from the said objection, the copy of which is also filed by Ms. Mishra, learned A.S.C., that, on 5.5.2008 the suit was adjourned to

9.9.2008 when the Appellants were set ex-parte and it was then posted to 16.8.2008, 3.2.2009, 17.3.2009, 15.5.2009 and lastly on 22.5.2009 when the ex-parte judgment was passed in the suit. It is further stated by the Respondent in his objection that after passing of the ex-parte decree, he applied before the Tahasildar in Misc. Case No.1919/12 for correction of revenue records in his favour and since no order passed by the Tahasildar, he filed W.P.(C) No.18423/2014 before this Court wherein certain directions were issued to the Tahasildar and again for non-compliance of the same, Contempt Case No.1107/15 was filed wherein directions issued to the Tahasildar and thereafter, the Tahasildar passed order dated 9.2.2017 in the Mutation Misc. Case No.1919/12 to correct the ROR in his favour. Subsequent to this only, the appeal was preferred before the learned District Judge, Bhadrak against the decree of the learned Civil Judge (Sr. Divn.), Bhadrak and as such, the grounds taken in the limitation petition before the learned District Judge, Bhadrak are unsustainable being false.

10. An analysis of facts narrated above as per the limitation petition and the objection filed thereto makes the picture clear that how the plea taken before the learned District Judge, Bhadrak for condoning the delay of around 9 years are casual and non-specific.

11. In the case of *G. Remegowda, Major and others* (supra), as relied by Ms. Mishra, learned A.S.C., the Supreme Court has observed as follows:

“14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are

set out in a number of pronouncements of this Court. See: *Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.*, AIR 1962 SC 361; *Shakuntala Devi Jain v. Kuntal Kumari*, AIR 1969 SC 575; *Concord of India Insurance Co. Ltd. v. Nirmala Devi*, AIR 1979 SC 1666; *Lala Mata Din v. A. Narayanan*, AIR 1970 SC 1953; *Collector, Land Acquisition v. Katiji*, (1987) 2 SCC 107 etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. In *Katiji case*, this Court said : (SCC p. 108 para 3)

When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in justice being done because of a non-deliberate delay.....

It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

15. In litigations to which government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of government are collective and institutional decisions

and do not share the characteristics of decisions of private individuals.

16. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

17. Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5, it might, perhaps, be some-what unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making a certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of government must have 'a little play at the joints'. Due recognition of these limitations on governmental functioning—of course, within reasonable limits—is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision making process. In the opinion of the High Court, the conduct of the law officers of the government placed the government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to government. It relied upon and trusted its law officers. Lindley, M.R., in the *In re National Bank of Wales Ltd.*, LR (1899) 2 Ch 629, 673 observed, though in a different context:

“Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them.”

In the opinion of the High Court, it took quite some time for the government to realize that the law officers failed that trust.”

12. The Supreme Court recently in the case of *State of Madhya Pradesh and others vs. Bherulal*, reported in (2020) 10 SCC 654, while dismissing the case on the ground of limitation have observed, by referring to the decision of *Postmaster General and others* (supra), as follows:-

“3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government [LAO v. Katiji, (1987) 2 SCC 107]. This position is more than elucidated by the judgment of this Court in *Postmaster General v. Living Media (India) Ltd.*, (2012) 3 SCC 563 wherein the Court observed as under: (*Postmaster General case*, SCC pp.573-74, paras 27-30)

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the

Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

XXX

XXX

XXX

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.”

13. In the instant case, the sole ground taken by the Appellants before the learned District Judge, Bhadrak to condone the delay of

2912 days is that, the rain water dropped from the roof of the G.P. Office damaged their diary for which no steps could be taken on the date fixed. Such a statement made by the Appellants appears vague on the face of the records. It is for the reason that the judgment was passed by the learned Civil Judge (Sr. Divn.), Bhadrak on 22.05.2009 and if the date was fixed in January, 2009, then the parties had ample time to recollect the same from the court which they did not do till passing of the decree. Even after passing of the decree on 22.05.2009, the Appellants could have awakened when the mutation case was filed by the Respondent before the Tahasildar in the year 2012. But they did not and slept till directions were issued to them in the contempt case and they were compelled to correct the revenue records in favour of the Respondent. Such approach of the officials to prefer the appeal after they were compelled by the order passed in the contempt case seems very casual and perhaps they to save their skin has come in appeal only to get a certificate of dismissal against them. It would not be out of place to mention here that even there was delay of 319 days in preferring the present second appeal which this Court has of course condoned.

14. The narration of facts as reproduced from the limitation petition and the objection thereof does not reveal that this is a case where the delay is occurred due to fraud, unusual conduct of the concerned Government pleader only. Rather it seems to be lackadaisical approach associated with laches on the part of the Appellants. So even viewing with a liberal approach towards the Appellants being the Government authorities, their conduct and the reasons stated do not deserve

anything in their favour to satisfy 'sufficient cause' for condoning the delay. It is important to observe here in the instant case that the inaction is not only on the part of the Government pleader but also on the part of the Appellants in major aspect and upon thorough analysis of such facts nothing gives in favour of the Appellants to find any bonafideness on their part. Rather the Appellants have acted in a negligent and most casual manner and remained inactive and undiligent in the matter. As such, no ground is found in favour of the Appellants to interfere with the order of the learned District Judge, Bhadrak.

15. In the result, the substantial question is answered against the Appellants and the appeal is dismissed.

(B.P. Routray)
Judge

