

IN THE HIGH COURT OF ORISSA AT CUTTACK
RSA No.113 of 2021

Asit Dey @ Asit Kumar Dey ***Appellant***

Mr. Bibekananda Bhuyan, Advocate

-versus-

Surajeet Dey and Others ***Respondents***

Mr. Prafulla Kumar Jena, counsel for Respondents 1 and 2-6

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
26.7.2022

Order No.

- 08.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. B. Bhuyan, learned counsel for the Appellant and Mr. P.K. Jena, learned counsel appearing for Respondent No.1 and 3-6.
 3. Present appeal by the defendant No.1(d) is against the order dated 16th July, 2021 of the learned District Judge, Cuttack passed in RFA No.51 of 2020.
 4. The facts giving rise to the present appeal in short are to the effect that, initially T.S. No.85 of 1998 was filed by the plaintiffs who are present Respondent Nos.1 to 6 and the preliminary decree was passed on 6th March, 2019. Then final decree proceeding was started which was ended on 19th December, 2020 and the final decree was

drawn on 18th January, 2020. Being aggrieved with the final decree, present Appellant preferred RFA No.51 of 2020 before the District Judge, Cuttack on 7th October, 2020.

5. The learned District Judge in the impugned order dated 16th July, 2021 dismissed the appeal on the ground of limitation.

6. Admittedly, the first appeal, i.e. FRA No.51 of 2020 was filed with delay of 254 days. It needs to be mentioned that the lock-down process started on 22nd March, 2020 due to COVID-19 pandemic. Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3/2020 has directed for waiving any limitation from the said date till such period covered by the pandemic. So, excluding the period covered from March 22nd till 7th October, 2020 from the total period of delay, the rest period remains is very short. Learned District Judge in the impugned order while rejecting the prayer to condone the delay, has stated that there is no sufficient cause shown by the Appellant which in the opinion of this court is not proper. The parties should always be granted substantial justice and when the period of delay is not that longer, the court should be liberal in considering the prayer for condoning of such delay.

7. In such circumstances as discussed above and considering the resultant period of delay, the order dated 16th July, 2021 is set aside and the matter is remanded back to the District Judge in RFA No.51 of 2020 with direction to decide the same on merit. The parties present before this court are directed to appear before the learned District Judge on 22nd August, 2022 along with certified copy of this

order and the District Judge shall put all his endeavour to dispose of the appeal within a period of four months from the said date. Further, considering the sufferings of the plaintiffs who are present Respondent Nos.1 and 3 to 6, present appellant is directed to pay the cost of Rs.1000/- to them on the date of appearance before the learned District Judge.

8. With the above observations and directions, the appeal is disposed of.

9. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

