

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.892 of 2017

Fanindra Yadav

... .. Appellant/s

Versus

Kinu Yadav and Ors.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sushanta Kumar Das, Advocate
For the Respondent/s	:	Mr. Bhanu Pratap Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL ORDER

11 20-03-2025 Heard learned counsel for the appellant and learned
counsel for the respondent.

2. The learned counsel for the appellant has filed the present petition against the order dated 22.08.2017 in Miscellaneous petition 01 of 2009 passed by F.T.C-II, Supaul whereby the prayer of re-admission of the Title Appeal under Order XLI, Rule 19 of the Code of Civil Procedure was rejected.

3. The learned counsel for the appellant has submitted that the appellant was appearing regularly till August 2004 but thereafter the appellant fell seriously ill because of which he could not make attendance before the learned Appellate Court from 05.10.2004 onwards and the learned counsel appearing on his behalf at that time also left him.



4. The learned counsel for the appellant further submitted that the appellant was informed that his appeal has been dismissed on 28.09.2007. The learned counsel for the appellant further submitted his medical certificate showing his illness from 25.07.2004 to 20.05.2009 because of which there was delay in filing the Misc. Appeal No.1 of 2009 under Order XLI, Rule 19 of the Code of Civil Procedure for re-admission of appeal recalling the order of dismissal on the grounds of default.

5. Having perused the material on record, it appears that there are two matters for consideration. The first matter pertains to condonation of delay in filing the petition for restoration of appeal which was dismissed for default. Section 5 of the Limitation Act was attracted in the application filed for restoration. Section 5 states as follows:

“5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order 21 of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed



period may be sufficient cause within the meaning of this section.”

6. In the case of ***Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157***, the Supreme Court held that the law of limitation is founded on public policy. The Court held as follows:

“14...The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation”.

7. In ***Collector (LA) v. Katiji [(1987) 2 SCC 107]*** the Apex Court observed:

“3. The legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression ‘sufficient cause’ employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach



in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) 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 injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

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

Making a justice-oriented approach from this perspective, there was sufficient cause



for condoning the delay in the institution of the appeal.”

8. In **N. Balakrishnan v. M. Krishnamurthy [(1998)**

7 SCC 123], the Apex Court made the following observations:

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.”

9. In the present matter, the appeal against the order of dismissal of T.A. No.30/2001 dated 28.09.2007 was filed after a delay of 1 year, 7 months and 14 days. The cause shown by the appellant for the delay was his chronic disease fibrosis for which he was under treatment from 25.09.2004 to 12.05.2009. The learned counsel for the appellant has submitted that the advocate who was representing the appellant also left him and hence the appellant was not in the condition to file the appeal in the prescribed period of limitation. The appellate court dismissed the petition for restoration of appeal on the grounds



that the appellant did not substantiate his case and that the appellant did not mention the name of the doctor who certified that the appellant was medically unfit in his examination-in-chief but it appears from the record that the appellant mentioned the doctor's name in his cross-examination. Thus, in light of the provisions of Section 5 of Limitation Act and the series of precedents laid down by the Apex Court, the prayer for condonation of delay is hereby allowed as it is necessary for the adjudication of rights and liabilities of both the parties in the instant case.

10. The second point for consideration is determining whether the Title Appeal No. 30 of 2001 should be re-admitted under Order XLI Rule 19. In the case of ***Harbans Pershad Jaiswal v. Urmila Devi Jaiswal, (2014) 5 SCC 723***, the Supreme Court held as follows:

“Where the appeal is dismissed in default under Rule 17, remedy is provided to the appellant under Rule 19 for readmission of the appeal on moving an application and showing that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing”.

11. It is noted that in the instant case the appellant has shown sufficient cause for non-appearance as he was suffering



from fibrosis which disabled him to appear before the Court. The counsel representing the appellant at the relevant time also left the appellant because of which the appellant was unable to appear before the Court.

12. In the case of ***Satpal Singh v. Chunni Lal, (2009) 6 SCC 607***, the Supreme Court restored the appeal which was dismissed for default as the appellant's brother had died and his wife had met with an accident during the relevant period. The Court held as follows:

“7. Having gone through the explanation offered in the application filed for restoration of the appeal, in our considered view, the learned Single Judge was not justified in dismissing the application for restoration of First Appeal No. 4 of 2001 for default under Order 41 Rule 19 of the Code, on the ground of non-appearance of the appellant or his learned counsel.

8. We have no doubt in our mind, that the appellant was justified in moving the application for restoration of the appeal and setting aside of ex parte order particularly when his brother had died and his wife had met with an accident during the relevant period.”

13. Considering after above discussion, the delay of 1



year 7 month 40 days for filling the application under Order 41 Rule 19 is hereby condoned and order dated 22.08.2017 in Misc. Petition No. 01 of 2009 is set aside. Thus, the present Miscellaneous Appeal is hereby allowed with a condition to pay a cost of Rs. 8000/- (Rupees Eight Thousand) by the appellant to respondent within 1 month from the receipt/copy of this order in the appellate court.

(Ramesh Chand Malviya, J)

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