

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.228 of 2020

Raju Banjara and others

.... *Appellants*
Mr. N. Panda, Advocate

-versus-

Bhikaru Gond

.... *Respondent*

CORAM:
JUSTICE CHITTARANJAN DASH

DATE OF JUDGMENT : 22.09.2023

Order No.

I.A. No.736 of 2022

06.

1. By means of this Application the Appellants seek condonation of delay pointed out by the office for 2989 days. In explaining the delay, the Appellants contended that soon after passing of the Judgment and decree by the learned court below, they got the certified copy and handed over the Papers to the Advocate instructing him to file the Second Appeal before this Court but the Advocate concerned did not file the Appeal. In the process they filed the Appeal on 31.12.2020 though the Decree was passed on 22.02.2014 i.e after the lapse of 2383 days beyond the period of limitation while it was to be filed within 90 days of passing of the decree. It is further contended by the Petitioners that belongs to Schedule Tribe Community and that the delay in filing the Appeal is due to the fault of the Advocate engaged earlier and latches cannot be attributed to him.

2. It is apt to mention that the Law of Limitation is the embodiment of the maxim *Vigilantibus non dormientibus jura subveniunt* that ensures the case is filed within the stipulated time frame to avoid unnecessary

delays. On the other hand, condonation of delay is the safeguard to the law of limitation and bars certain cases in which the delay in filing the suit is justifiable, i.e. can be backed by having “sufficient cause”.

3. Section 5 of the Limitation Act, 1963 mandates that an appeal or application may be accepted even after the period of limitation has expired if the appellant or applicant satisfies the court that he did not have *sufficient cause* to file the appeal or application within the limitation period, irrespective of whether the party is a state or a private one. The phrase “sufficient cause” has not been explicitly defined and therefore, varies from case to case. In some cases, the Court has not allowed even a delay of one day, while in others it has allowed delay of even for several years. In essence, it differs from case-to-case and the Court has optional purview to decide if a case is reasonable for approbation or not, depending on the facts and circumstances of each case, the Court has scope in deciding what constitutes sufficient cause. The Apex Court in *G. Ramagowda v. Special Land Acquisition Officer 1988 SCR (3) 198* decided that “sufficient cause” should be interpreted broadly in order to achieve substantial justice whereas in the case of *Majji Sannemma @ Sanyasirao Vs Reddy Sridevi & Ors. (CIVIL APPEAL NO.7696 OF 2021)* the Court has dismissed the notion that equity principle should be considered when dealing with condonation of delay, stating that such pleas should be rejected if the delay is not adequately explained giving thereby a clear indication that the party seeking condonation of delay must show its diligence in pursuing the matter but could not put forth the same being prevented by sufficient cause.

4. In the case in hand, the delay occasioned in bringing the Appeal is assessed by the office at 2989 days i.e more than six and half years. The

sole ground advanced for the delay is that the Petitioners/Appellants handed over the brief to the lawyer but the lawyer concerned did not file the Appeal in time thereby got delayed in filing the Appeal and the same being not attributed to him is entitled to the relief.

5. In view of the contentions of the Appellants, it is imperative to examine if the Appellants was diligent in handing over the brief to the lawyer to escape their latches? Very surprisingly, the Petition is completely silent as to on what date (even by approximation) they handed over the brief to the lawyer engaged earlier. The name of the lawyer to whom the brief was handed over has also not been revealed in the petition. Absence of such information creates a serious doubt if at all the matter was entrusted to the lawyer before the expiry of the period of limitation.

6. In order to correlate the ground vis-à-vis the circumstances appearing before the Appellants, when this Court examined the case record nothing left for the Court to doubt but to hold that truly the Appellants could not have disclosed the above information because the ground propounded by the Appellants is based on an absolute myth and blatant lie as the case record reveals that the application for certified copy of the Judgment itself was made by the Appellants on 03.11.2020 and was obtained on 09.11.2020 i.e six and half years beyond the period of limitation. Therefore, the plea of the Appellants that they had handed over the papers to the lawyer to file Appeal in time but the lawyer concerned did not file the Appeal is a plea advanced only to get out of the rigor of law. Rather, it can be said that the Appellants have made an attempt to take a false plea to overcome the issue of limitation though he himself remained callous to his own cause.

7. The Apex Court in *P.K. Ramachandran Vs. State of Kerala and Anr., (1997) 7 SCC 556* held that in the absence of reasonable, satisfactory, or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly.

8. Furthermore, the Apex Court in the case of *Basawaraj and Anr. Vs. Special Land Acquisition Officer, (2013) 14 SCC 81* observed and held that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction, or lack of bona fides is attributed to the party; that even though limitation may harshly affect the rights of a party but it has to be applied with all its rigor when prescribed by statute and in case a party has acted with negligence, lack of bona fides, or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is further observed that each application for condonation of delay has to be decided within the framework laid down by the Court. The Apex Court also held that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to a violation of statutory principles and showing utter disregard to the legislature.

9. It is trite that law helps a vigilant, not an indolent. In the instant case the Appellants have remained completely recalcitrant in espousing his cause and made up his mind one fine morning to agitate the same. The Appellants had absolutely no mind to file Appeal. Had any such intention was there they could have at least applied for the certified copy of the Decree and obtained the same within the limitation prescribed i.e 90 days. Therefore, there is no ground explained to condone the delay much less to speak of sufficient cause. Relying on the ratio propounded

in various decisions as discussed coupled with the one in the matter of *Majji Sannemma @ Sanyasirao vs Reddy Sridevi & Ors. [CIVIL APPEAL NO.7696 OF 2021]* this Court finds no merit in the Petition filed by the Appellant for condonation of delay by 2989 days i.e approximately six and half years which is not only deliberate but intentional.

10. The Petition for condonation of delay being devoid of merit accordingly stands rejected and the I.A is dismissed. In the circumstance there is no order as to cost.

(Chittaranjan Dash)
Judge

RSA NO.228 of 2020

11. In view of the dismissal of the Petition for condonation of delay the RSA is not admitted and hence dismissed.

(Chittaranjan Dash)
Judge

KC Bisoi/A.R.-Cum-Sr. Secretary