

(1996) 06 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 5131 of 1993

Gokulananda Mohanty

APPELLANT

Vs

Ranibala Mohanty and Others

RESPONDENT

Date of Decision : 24-06-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 12, 5

Citation : (1996) 2 OLR 256

Hon'ble Judges : P. Ray, J; Dipak Misra, J

Bench : Division Bench

Advocate : B. Routray, A.K. Mohanty and A.A. Das, for the Appellant; H.P. Rath, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—Instances are not rare when procedural restraints are the substantial controversies and create a sense of helplessness and foster frustration among the innocent litigants. Delay being not condoned in preferring a Title Appeal at the instance of the defendants against the judgment and decree whereby right, title and interest of the valuable properties of the parties were determined and civil revision being carried from the said order of rejection and having met the same fate, the petitioner, a septuagenarian, has approached this Court invoking its extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution.

2. The factual scenario as emerges is that the opp. patty Nos. 1 to 4 as plaintiffs instituted Title Suit No. 208.87 in the Court of learned Munsif, Jagatsinghpur for declaration of right, title, interest and possession of the suit land with the further declaration that the sale deed, Ext. A, is invalid and inoperative with a further alternative prayer for a decree of partition. The suit was contested by the defendants and eventually the learned Munsif decreed the suit in part directing the defendants 2 to 4 therein to execute a registered sale deed in favour of the

plaintiffs in respect of eastern half of the suit land which they had purchased under Ext. A. The said judgment was pronounced on 11-5-1990 and the present petitioner applied for certified copy of the judgment on 27-6-1990 and the certified copy of the judgment was made available on 16-7-1990. Decree was signed on 20th August, 1990. After obtaining the certified copy of the decree the petitioner preferred Title Appeal No. 17/90 before the subordinate Judge (present designated as Civil Judge, Senior Division), Jagatsinghpur. As there was delay in filing the appeal, an application u/s 5 of the Limitation Act was filed for condonation of the same. Ground of illness was advanced and plea of non-negligence was high-lighted. The application for condonation of delay was resisted by the plaintiff-respondents therein. The appellate Court was of the view that the plea of illness was not genuine as there were two medical certificates. He entertained doubts with regard to the stand of the appellants therein as far as it related to appellant No. 1 exclusively being in charge of the litigation. Assigning these reasons the appellate Court came to hold that the delay in filing the appeal was not to be condoned. The said application being rejected the present petitioner alongwith other appellants preferred Civil Revision No. 268/ 92 in the Court of 1st Addl. District Judge, Cuttack. The revisional Court was of the view that non-reliance on the medical certificates by the appellate Court was justified and there was no perversity in any of the findings recorded by the appellate Court. Being of such view he rejected the revision of the revisionist.

3. Shri B. Routray, learned counsel appearing for the petitioner contends that there are substantial grounds for condonation of delay and the Courts below have adopted a very restricted approach. It is his submission that there were materials on record to come to a definite conclusion that the present petitioner was looking after the case and he was taken ill and he being an old man of 70 years then, the plea should have been accepted and should not have been weighed with parameters of technical rigorism. Lastly he has contended that property involved in the suit is quite valuable and their right should not be extinguished at the threshold of the appeal and they should be allowed the entry to canvass their contentions with regard to merits in the appeal, as law requires a liberal view to be taken in the matter of limitation and parties are to be permitted to agitate their grievances in the sphere of merits.

4. Mr. H.P. Rath, learned counsel for opp. parties 1 to 4 controverting the submissions advanced by the learned counsel for the petitioner submits that the orders passed by the Courts below are imprescriptible and in exercise of extraordinary jurisdiction of this Court the same is not to be interfered with in absence of any perversity or in absence of reasons which are not germane to the issue, He has also submitted that a negligent and recalcitrant litigant should not be shown under indulgence as it is the mandate of the law, litigations have to be finalised and doors are not to be kept wide open to enter and exit as the litigant desires or designs. The last plank of submission of Sri Rath is that the appellants who had preferred the appeal and revision were four in number, but they have not joined with the present petitioner and they have been arrayed as opp. parties

7 to 9 and therefore, the writ application at the instance of the present petitioner is not maintainable and the relief sought for is impermissible.

5. Question of limitation is in the realm of adjective law, it has its own significance, but it cannot be permitted to function as a pivot. It cannot be regarded as a factor having paramount importance in the process of adjudication. Various factors are to be taken into consideration while dealing with an application for condonation of delay. It has been emphasised by the apex Court on number of occasions that a liberal approach has to be taken while dealing with application of this nature. We may profitably refer to decisions rendered in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and in the case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, which have given guidelines and have laid down that a liberal approach is always called for. Their Lordships have indicated that the expression "sufficient cause" 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. Recently this Court in the case of M.K.C.G. Medical College represented by the Principal and Ors. v. Smt. Bidulata Mahapatra reported in (1996) 81 CLT 643 while emphasising on the approach of the lower Courts has held as follows :

"It is settled in law that limitation is a matter of technicality. It is in the realm of adjective law and has its own importance, but it cannot be the summum bonum of every litigation."

Applying the aforesaid parameters and judging by the yardstick laid down by the apex Court in the case reported in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, we are of the considered view that the approach of the Courts below is hyper-technical, restricted, confined, circumscribed by unessential restraint and is not in consonance with the principles laid down by the apex Court. We have perused the impugned orders and have found that there are some discrepancies in the matter of evidence and there are some defects in the medical certificates, but we cannot shut our eyes to the age of the petitioner and the kind of life he leads in a rural and rustic milieu.

The entire gamut of facts can be perceived from another angle. It appears that although last date for filing appeal expired on or about June 10, 1990 inasmuch as application for certified copy of the judgment and decree was not made within the prescribed period of limitation, but in reality delay was for only about 22 days. Decree of the trial Court was signed on August 20, 1990 and as such, the petitioner could not have presented the appeal earlier. If the petitioner had filed an application for obtaining the certified copy of the decree before the same was signed, he would have got the benefit of exclusion of the period which elapsed between the date of such application and actual signing of the decree. Failure to apply for certified copy in proper time placed the petitioner under some technical difficulty in availing of the benefits conferred by Section 12 of the Limitation Act

in the matter of computation of period of limitation, but it is apparent on the face of records that even if he had applied earlier in time he could not have presented the appeal at least before August 21, 1990. Thus the period spent before August 20, 1990 became immaterial and to adjudge sufficiency of the cause explanation for the period between the signing of the decree and presentation of the appeal was/is really immaterial.

6. The petitioner applied for certified copy of the decree on August 22, 1990. Certified copy was made ready for delivery on September 3, 1990, but delivery of the same was taken on September 10, 199. Appeal was presented on September 11, 1990. Although the petitioner as of right was not entitled to exclude the time taken for certified copy of the decree, but it offered sufficient explanation for consumption of the period up to September 3, 1990. Even if the petitioner's plea of illness is disbelieved and proper explanation for the delay of 7 days is taking delivery of the certified copy of the decree is absent, the tact remains is that delivery of the certified copy of the decree was taken on September 10, 1990 and appeal was presented on the next day.

7. Supreme Court in the case of Collector, Land Acquisition, Anantnag v. Mst. Katiji and Ors. (supra) has laid down :

"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."

The Courts below have failed to take note of the said principle and adopted a rigid and legalistic approach instead of a justice-oriented approach. In the facts and circumstances of the present case such rigid approach of the Courts below had resulted in impairment of the cause of substantial justice.

8. The other contention of Sri Rath that all the appellants have not approached this Court is devoid of merit. The appellants who have not joined the petitioner have been arrayed as opp. parties 7 to 9 and once they are brought on record and the matter is adjudicated in their presence, we are of the view that technical objection by Sri Rath has no legs to stand upon. It is settled in law, while challenging orders of this nature one of the aggrieved persons can come up and the same would enure to the benefit of other non-applicants or non-petitioners.

9. While observing that liberal approach is the rule in the matters of condonation of limitation, yet the aggrieved party who was compelled to resist the application has to be compensated. There may be grounds which establish sufficient cause for condonation of delay, but that does not necessarily mean the application is to be allowed without cost. A balance has to be struck between the sufficient cause and the compensation. We are of the view that in the present case while condoning the delay in filing the Title Appeal by the petitioner and the opp, parties 7 to 9 and directing for hearing of the appeal on merits, substantial cost is to be awarded to the plaintiff-opp. parties 1 to 4 and we determine quantum of Rs. 1,000/- which should be paid within a period of six weeks from today to the

learned counsel for the opp. parties. On cost being paid, the appeal being an old one should be disposed of by the appellate Court by end of October, 1996.

10. The writ application is accordingly allowed and the orders passed in Annexures 3 and 4 are hereby quashed. There shall be no order as to costs.

Pradipta Ray, J.

I agree.