

(2011) 03 JH CK 0171

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1866 of 2009

Jharkhand State Housing Board and Another

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

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

Citation : (2011) 2 JCR 503

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred by the Petitioners under Article 226 of the Constitution of India against the order passed by the District Judge, Sarikella in Title Appeal No. 12 of 2008. This title appeal has been dismissed by the District judge by not condoning the delay of 15 days in preferring the appeal and therefore, the present writ petition is preferred.

2. It is submitted by the counsel for the Petitioner that in fact, Title Suit No. 17 of 2004 was instituted by the contesting Respondent i.e. Respondent No. 2. Judgment was delivered by the trial court on 30th July 2008. Decree was drawn on 14th August 2008. Certified copy was applied on 20th August 2008, which was ready on 28th August 2008. Thereafter title appeal was preferred before the lower appellate court on 23rd September 2008. Thus, in fact, from the date of decree, if the dates are counted, there is no delay at all. Even otherwise also 15 days delay pointed out by the lower appellate court ought to have been condoned for the reasons stated in paragraph-4 and 6 of the delay condonation application preferred by the Petitioner u/s 5 of the Limitation Act in the pending title appeal, which is at Annexure-1 to the memo of the petition. This aspect has not been properly appreciated by the lower appellate court and hence, the order deserves to be quashed and set aside. Delay of 15 days may be condoned and

appeal may be directed to be heard afresh.

3. Counsel appearing for Respondent No. 2 submitted that delay has been properly explained and hence, the order passed by the lower appellate court is absolutely true, correct and in consonance with law. Counsel appearing for the State submitted that looking to the facts, the delay ought to have been condoned by the lower appellate court specially to the reasons stated in delay condo nation application.

4. Having heard both the parties and looking to the facts and circumstances of the case, I hereby quash the order passed by the District Judge, Serikella in Title Appeal No. 12 of 2008 dated 6th December 2008, mainly on the following facts and reasons:

(i) Respondent No. 2 is the original Plaintiff, who has instituted Title Suit No. 17 of 2004, which was decreed in favor of the Plaintiff. The appeal was preferred by the present Petitioners along with delay condo nation application.

(ii) The judgment was delivered on 30th July 2008 by the trial court in Title Suit No. 17 of 2004. Decree was drawn on 14th August 2008. Certified copy was applied on 20th August 2008, which was ready on 28th August 2008 and Title Appeal was preferred on 23rd September 2008.

(iii) Thus, looking to these dates, there is no delay in preferring the appeal. Nonetheless, it appears that an application was preferred by the Petitioner for condo nation of 15 day delay in preferring the title appeal. Looking to the dates and looking to the reasons as stated in paragraphs-4 and 6 of the delay condo nation application, it ought to have been allowed by the lower appellate court.

(iv) Too much technical view ought not to have been taken by the District Judge when a public body is preferring an appeal and that too in a title suit. Public Institution always takes some time in taking decision. It ought to have been kept in mind by the District Judge that it is not easy to move the machinery with all speed. When a public body prefers an appeal, the said body has to take work from honest hand and dishonest hand, enthusiastic persons as well as lethargic persons. Sometime the officer is lethargic but honest. As a cumulative effect of this type of officers, the delay is being caused and therefore, whenever there is a delay condo nation application from a public body, it ought to have been condoned liberally. Even otherwise also, there are several negative factors which will work like break, against the public body. It may happen that any honest but lethargic officer of public body may retain the file for few days and the appeal of the public body will be time barred. There is vast difference between a public body, preferring an appeal and a private personnel, who is preferring an appeal.

(v) Looking to the impugned order, it appears that the aforesaid aspect of the matter has not been properly appreciated by the District Judge, Seraikella. The reasons stated in the delay condo nation application are the reasonable reasons for condo nation of delay.

5. In view of these facts, I hereby quash and set aside the order passed by the District Judge, Seriakella dated 6th December 2008 passed in Title Appeal No. 12 of 2008. The delay is hereby condoned and the appeal is restored to its original file. I hereby direct the District Judge, Serikella to hear Title Appeal No. 12 of 2008 afresh on its own merit.

6. This writ petition is, accordingly, allowed and disposed of.