

(2008) 02 JH CK 0054
In the Jharkhand High Court

Jyotilal Mahato and Others

APPELLANT

Vs

Udhir Mahato and Others

RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Citation : (2008) 3 JCR 15

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—In this CMP. the petitioners have prayed for restoration of FA No. 163 of 1969, which was dismissed for default on 3rd January, 1985.

2. It has been stated that the said first appeal was filed in the Patna High Court. Patna and was admitted. Notices were issued. Respondents had appeared. Requisites were also deposited and the appeal was to be heard finally. In the meanwhile, the appellant No. 2, Haripada Mahato, who was looking after the case on behalf of the appellants, fell seriously ill and ultimately died. Other appellants were not in the know of the progress of the appeal. In the meanwhile, Ranchi Bench of the Patna High Court was constituted and all the cases arising out of the territorial jurisdiction of Ranchi Bench were normally transferred to Ranchi Bench. Learned counsel for the petitioners submitted that the remaining appellants were in the hope that their case, which arises out of the land situated within Singhbhum District, shall be transferred to Ranchi Bench and they will get fresh notice, but even after a long wait, when they did not get any notice, they enquire about the case and traced out that their appeal was dismissed as far back as in the year 1985.

3. The petitioners then approached their counsel and filed this CMP with interlocutory application (IA No. 2093 of 2004) praying for condonation of delay. It has been stated in the interlocutory application that there was no wilful fault or laches on the part of the petitioners and that they were prevented from pursuing

their appeal under the circumstance beyond their control. The appellant No. 2 in the said appeal was in the charge of the litigation and the petitioners were crippled because of his long illness, which led to his death. The appellants were also in the hope that like other cases, their appeal will be also transferred to Ranchi Bench and they will be noticed on receipt of the record by the Ranchi Bench, but even after long wait, the petitioner could not get any information or knowledge about their appeal.

4. The petitioners traced out the case, but after a long lapse of time of several years. But, there was no intentional laches on the part of the petitioners.

5. Mrs. Jaya Roy, learned Counsel, appearing on behalf of the petitioners, submitted that though there is inordinate delay in the circumstances explained by the petitioners, the appeal deserves final hearing, as the subject matter of the appeal is raiyati lands of considerable area and if the appeal is not restored to its original file and stage, the petitioners shall be put to suffer irreparable loss and injury and it would be prejudicial to them and their future generation.

6. The petition for restoration and application for condonation of delay have been contested by the respondents by filing counter affidavit and rejoinder. It has been stated that the petitioners were/are negligent and there has been wilful default. The explanation made by them is far from the truth and the same is not sufficient for condoning the delay of number of years. It has been submitted that there were several appellants in the appeal and the death of appellant No. 2 is not of much relevance. The plea has been taken that the appellant No. 2 was in the charge of the case is only for the purpose of condoning the delay. The application has no merit and the same is liable to be dismissed.

7. I have heard learned Counsel for the parties. The admitted position is that the first appeal was filed at Patna in 1969. The appeal was dismissed on 3rd January, 1985. This CMP, praying restoration of the appeal, has been filed in May, 2002. There is, thus, inordinate delay in moving this Court for the relief prayed for by the petitioners. Though there is no day to day explanation for the delay, the petitioners have come with the explanation that the delay is not intentional. The appellant No. 2 was in the charge of the case, who fell seriously ill and ultimately died. In the meanwhile, the Ranchi Bench was constituted and all the cases of this area had been normally transferred to this Bench. After transfer, the litigants were informed by the Court. It has been submitted that the petitioners were also in the hope that their appeal will be also transferred after permanent Constitution of Ranchi Bench in 1976 and as such, they were waiting for the information/notice of the transfer of the case. The Constitution of the Bench and normal transfer of the case falling within the territorial jurisdiction of Ranchi Bench has not been denied by the respondents. It is to the notice and knowledge of all concerned that a permanent Bench was established at Ranchi in the year 1976 and normally all the cases of this area were transferred. The petitioners' appeal was dismissed in 1985 i.e. after establishment of Ranchi Bench in the year 1976. This ground is sound and unimpeachable and the reason for not attending the

appeal in Patna High Court at Patna on that basis is reasonable and worthy of credence.

8. In view of the above convincing explanation of the delay, the petitioners' prayer for restoration of the appeal deserves acceptance.

9. However, since inordinate delay in filing this petition has certainly caused inconvenience and harassment to the respondents. The petitioners are, thus, liable to compensate the respondent as a condition for condonation of delay and restoration of the appeal.

10. In view of the above, this interlocutory application is allowed. The delay in filing the CMP is condoned. The CMP is allowed. FA No. 163 of 1969 is restored to its original file and stage subject to payment of cost of Rs. 10,000/- (Rupees ten thousand) to the respondents within a period of two months. If the petitioners fail to pay the cost and deposit the receipt within the said period, this order will become automatically ineffective.