
(2015) 08 OHC CK 0007
In the Orissa High Court
Case No : R.S.A. No. 267 of 2015

Kishore Rout

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 2 ILR Ori 1010

Hon'ble Judges : D. Dash, J.

Bench : Single Bench

Advocate : A.K. Choudhury and K.K. Das, for the Appellant; P.R. Routray, for the Respondent

Final Decision : Allowed

Judgement

D. Dash, J.—This appeal has been filed challenging the judgment and decree dated 8.9.2006 passed by the learned Additional District Judge, 1. This appeal has been filed against the order dated 29.06.2015 passed in CMA No. 7 of 2014, arising out of RFA No. 12 of 2014 in the matter of an application under Section 5 of the Limitation Act refusing to condone the delay in filing the appeal. Heard the learned counsel for the parties.

Perused the case record.

The appellant as the plaintiff had filed C.S. No. 16/2012 in the court of learned Civil Judge (Jr.Divn.), Hinjilicut, Ganjam. The suit had been dismissed by judgment and decree dated 30.8.2012 and 6.9.2012 respectively. The delay is for a period of 22 months in filing the appeal before the learned Addl. District Judge, Chatrapur.

2. It is stated that the appellant was working in Surat and on the date of pronouncement of the judgment, he was absent. He returned from Surat on 30.10.2012, thereafter as ill luck would have it, he fell ill and suffered from typhoid and malaria which forced him to remain under the treatment of a doctor.

It is further stated that his wife also fell ill in January, 2013 which kept the appellant engaged in taking her care for treatment and ultimately she died on 4.6.2013. After that in the month of July 2013 when he was coming to Berhampur to the contact his lawyer, he met with an accident and received injury causing paralytic effect. So it is stated that for all these events and reasons beyond the control of the appellant, the appellant could not file the appeal in time. The delay in filing the appeal is thus said to be neither intentional nor deliberate.

The appellant in the case has projected his absence in the native place; his illness on return; illness of his wife leading to her death and lastly his meeting with an accident and remaining confined for further period as the sufficient cause to have prevented him from filing the appeal in time.

3. The lower appellate court having taken these averments made in the petition for condonation of delay into consideration and on going through the certificates of the doctors filed by the appellant has gone to analyze those in coming to a conclusion that such explanations furnished by the appellant are neither causable nor satisfactory.

4. Learned counsel for the appellant submits that the approach of the lower appellate court in the matter of condonation of delay in the facts and circumstances of the case has been pedantic instead of being rational and pragmatic. It is his submission that in the particular case the appellant does not stand to gain benefit by filing the appeal late and therefore, to serve the cause of substantial justice, the appellant ought to have been afforded with an opportunity of getting his appeal heard and decided on merits.

5. Learned counsel for the State appearing for respondent Nos. 1 and 2 and learned counsel for respondent Nos. 3 and 4 refute the above submission. According to them, the delay is not of small period and therefore, the explanations ought not to have been satisfactory.

6. It has been held in *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai*, , referring to some of the judicial precedents that:--

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

In the light of the propositions laid down in the aforementioned judgment when the facts and circumstances of the case as stated in the petition supported by affidavit are gone through, this Court is of the considered view that the lower

appellate court should have condoned the delay in filing the appeal by accepting the explanations as sufficient cause for not filing the appeal in time.

Accordingly, the appeal is allowed. The impugned order passed by the lower appellate court is set aside, delay in filing the appeal before the lower appellate court is condoned and the matter is remitted to it to decide the appeal on merits in accordance with law after giving an opportunity of hearing to the parties. Let the hearing of the appeal be expedited.