
(2012) 06 JH CK 0004
In the Jharkhand High Court
Case No : CMP No. 18 of 2009

Mazhar Imam and Others

APPELLANT

Vs

Zaibun Nissah and Others

RESPONDENT

Date of Decision : 13-06-2012

Acts Referred:

Citation : (2012) 4 JCR 485

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; A.K. Sahani, for the Respondent
Nos. 1 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—In this application, the petitioners have prayed for condonation of 1161 days delay in filing C.M.P. No. 18 of 2009. It has been stated that the petitioners had filed Second Appeal No. 620 of 2004. When the appeal was taken up under the heading "For Orders" on 30.9.2005, nobody appeared on behalf of the appellants. However, since there were some defects, this Court granted one week's time to remove the defects. In spite of allowing the said time, the defects were not removed. The appeal stood dismissed for default for non-compliance of the peremptory order.

2. It has been stated that the petitioners had engaged their counsel and they had assured that all the required steps shall be taken. However, since the petitioners did not get any information for a long time, they contacted their counsel but no satisfactory reply was given by their counsel. The petitioners, thereafter, engaged another counsel by taking "No Objection" from the previous counsel in September 2008. The petitioners got record inspected and found that the appeal was dismissed for default long back. The petitioners, thereafter, filed C.M.P. for restoration of the second appeal but due to the reasons aforesaid, there was delay in filing C.M.P. It has been submitted that there was no wilful laches or negligence on the part of the petitioners and they were fully dependant

on their previous counsel, who did not inform about the dismissal of the appeal. It has been further submitted that if the delay is not condoned and the C.M.P. is not entertained, the petitioners shall suffer irreparable loss and injury.

3. Notices were issued to the respondents-opposite parties. In spite of service of notice through the advertisement in the newspaper, respondent Nos. 1 and 3 only appeared and contested this application. It has been stated, inter alia that there is no proper explanation for inordinate delay in filing C.M.P. and that no ground has been made out for condonation of such a long delay.

4. Learned counsel, appearing on behalf of the respondents-opposite party Nos. 1 and 3 submitted that the appeal was filed in the year 2004 and the C.M.P. has been filed in 2009. The petitioners were negligent and they did not try to get any information about the progress of the appeal. Such negligence and the long delay is not condonable and the application for condonation is liable to be rejected.

5. I have heard learned counsel for the parties. It appears from the record that the petitioners are the residents of distant place, They have filed Second Appeal No. 620 of 2004 through their counsel. It has been stated that their counsel had assured that all the required steps shall be taken. Since the appeal consumes some time, there may be a reason for the petitioners to believe that the same has not been taken up. However, for long time, they did not get any information from their counsel. They approached this Court and engaged another counsel, got the record inspected and found that their counsel had not taken proper step and the appeal stood dismissed for default. Under the said facts and circumstances, it cannot be presumed that the petitioners were negligent and were not vigilant, when the petitioners had filed appeal in time and engaged their counsel.

6. Though the opposite party Nos. 1 and 3 have opposed this application, no document has been brought on record to show that the petitioners failed to take steps earlier, in spite of information of dismissal of appeal.

7. Considering the above, I find that there was no wilful negligence on the part of the petitioners in not appearing and in not filing C.M.P. and Interlocutory Application within time. This application is thus, allowed.

8. However, since the opposite parties have to contest this application by engaging their counsel and incurring expenses, for their no fault, delay of 1161 days is condoned, subject to payment of cost of Rs. 2500/- (two thousand five hundred) to the counsel for the opposite party Nos. 1 and 3 within one month. I.A. No. 1205 of 2009 stands disposed of.