
(2003) 04 OHC CK 0046
In the Orissa High Court
Case No : Civil Revision No. 501 of 2000

Sri Raghunath Dey

APPELLANT

Vs

Nirmal Chandra Dey @ Nilamani and Others

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 5

Citation : (2003) 96 CLT 11

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : K.K. Rath, H.S. Deo, R. Mishra and S.N. Sahoo, for the Appellant; S. Mishra, A.K. Mishra, A.K. Sharma, M.K. Dash, R.N. Prusti and P.K. Dash, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Heard.

2. This Civil Revision is directed against the order passed on 23.8.2000 in Title Appeal No. 13 of 2000 of the Court of District Judge, Balasore. Learned District Judge, after hearing the parties, rejected the application u/s 5 of the Limitation Act filed by the petitioner and accordingly dismissed the appeal being barred by law of limitation.

3. Admittedly, the judgment impugned in the aforesaid Title Appeal was delivered on 22.3.1999 and as against that, according to the petitioner on the basis of a wrong legal advice he filed First Appeal No. 298 of 1999 in this Court and on 27.9.1999 when this Court found that the appeal was not maintainable in this forum, thereafter, he filed the appeal in the Court of District Judge, Balasore on 28.1.2000. To explain the delay, petitioner stated before the Court below relating to his intermittent illness one of which period is from 29.9.1999 to 27.1.2000. The respondent/opposite parties contested on the issue of limitation and placed material before the Court below that after disposal of the suit and till September,

1999 petitioner was hale the hearty and was attending other Courts. Learned counsel for the petitioner has tried to impress this Court that in that respect the factual finding recorded by the District Judge is not correct. After perusal of the finding recorded by the Court below, this Court does not find any reason to dispute to the correctness of the factual finding recorded by the District Judge.

4. It is not in dispute between the parties that First Appeal No. 298 of 1999 was filed by the petitioner in this Court and that such F.A. was found not maintainable as per the order of this Court passed on 27.9.1999. Though the appeal was filed on 28.1.2000 but the intervening period has been explained by the petitioner showing his illness. Admittedly, there is nothing on record which was available to the lower appellate Court to indicate that during that period appellant was attending any Court or was not ill. That aspect was not duly considered when the plea of illness was supported by a medical certificate. It is true that the conduct of the petitioner, as noted in the impugned order, indicates that he is a habitual defaulter, but since the period between 28.9.1999 to 27.1.2000 has been explained and that is found to be sufficient, therefore, this Court finds that the learned District Judge without due consideration of that factual aspect unreasonably rejected the application u/s 5 of the Limitation Act emphasising on the past conduct of the petitioner. That does not appear to be a correct approach nor that approach is in the interest of justice. Under such circumstance, while setting aside the impugned order, the delay is condoned subject to payment of cost of Rs. 2,500/- (two thousand and five hundred). The cost be paid within a period of one month and the receipt be filed in the Court below. For a period of one month, the final decree proceeding shall remain stayed and thereafter any appropriate order may be passed by the lower appellate Court on proper application.

5. The Civil Revision is accordingly allowed.

6. At this stage, learned counsel for the opposite party expresses his concern for the long pending dispute between the parties and requests that the appeal be directed to be disposed of expeditiously. The appellate Court, therefore, shall look to that aspect and shall avoid to grant liberal adjournment to either of the parties and to dispose of the appeal as expeditiously as possible. Any attempt for delay in disposal of the appeal may be brought to the notice of this Court.