

Pradipta Kumar Pradhan Vs. Sabilata Dei and ors.

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Court : Orissa

Decided On : Dec-07-1999

Reported in : 2000(I)OLR420

Judge : P.K. Misra, J.

Acts : [Limitation Act, 1963](#) - Sections 5

Appeal No. : Misc. Case No. 1110 of 1999 (in First Appeal No. 448/99)

Appellant : Pradipta Kumar Pradhan

Respondent : Sabilata Dei and ors.

Advocate for Def. : D. Bhuyan, B. Bhuyan, A.K. Sahu, B.N. Das, ;N.C. Panigrahi and B.K. Patnaik

Advocate for Pet/Ap. : B.B. Biswal and M.R. Panda

Judgement :

ORDER

P.K. Misra, J.

1. Present respondent No. 1 had filed Title Suit No. 23.0/95 for eviction of the present appellant. The present appellant had filed Title Suit No. 232/98 for permanent injunction and mandatory injunction against the present respondents.

Both the suits were heard together and disposed of by a common judgment and a common decree had been prepared. The present appellant filed First Appeal No. 444/98 in the High Court purporting to challenge the common decision in both the suits. Objection was raised by present respondent No. 1 regarding maintainability of one appeal. The present appellant filed counter stating that one appeal would be maintainable. However, subsequently, the present appellant filed Title Appeal No. 36/99 in the Court of the District Judge, Khurda, against the decision relating to Title Suit No. 232/98 as the valuation in the said suit was less than rupees one lakh. Since the appeal had been filed in the High Court against the decision in the connected suit, the records in Title Appeal No. 36/99 were called for and subsequently, the said Title Appeal has been renumbered as First Appeal No. 448/99. In this First Appeal, a petition for condonation of delay has been filed stating that one appeal had been filed under a bona fide impression of the counsel that one appeal would be maintainable, as one common judgment and common decree had been passed.

2. At the time of filing of the appeal, certified copy of the decree had not been filed as certified copy of such decree which had been obtained had been filed in connected First Appeal No. 444/99. An application was filed stating that the certified copy of the judgment and decree would be filed as soon as the same is made available. In the aforesaid background, the learned counsel for the appellant prays for condonation of delay.

3. Objection has been filed on behalf of the contesting respondents. It has been stated that the appellant is represented by a fleet of lawyers including Shri Braja Bandhu Biswal, who is a senior member of the Bar. It is, therefore, submitted on behalf of the respondents that if little care would have been taken, advice could not have been given for filing one appeal.

4. It is true that Shri Braja Bandhu Biswal is a senior and eminent lawyer of the Bar and in normal course, one would have expected that he would have advised for filing of two appeals. It is, however, evident that the opinion for filing one appeal is abona fide opinion for which the appellant should not be made to suffer. After all, the appellant has done all that he could do by engaging a senior lawyer and if

there is any bona fide, but erroneous advice given by the lawyer, the party should not be made to suffer, when it cannot be said that there is any mala fide on the part of the appellant himself or on the part of the counsel representing the appellant.

5. The learned counsel for the contesting respondent also submitted that until filing of the decree, it cannot be said that the appeal had been properly presented and the date of filing of the decree should be taken to be the proper date of presentation of the appeal and since the delay has been explained only till the date of filing of the Title Appeal before the District Judge and not thereafter, the delay should not be condoned.

6. Once it is found that the delay in filing the Title Appeal is explained, the subsequent delay is explained by the circumstances which are apparent on the record. It is apparent that after filing the appeal, the present appellant has obtained the certified copy of the decree and filed the same. Further delay is only due to the technical snag and it cannot be said that the appellant was actuated by any mala fides. On the other hand, the very fact that the appellant filed the appeal as soon as he was made aware of the obligation to file two separate appeals, is indicative of the fact that the appellant was pursuing the matter with all sincerity. Having regard to all these aspects, I think, sufficient cause has been shown for condoning the delay. Accordingly, the delay in filing First Appeal No. 448/99 is condoned subject to payment of Rs. 500/- (rupees five hundred) as cost which shall be paid to Shri B. Bhuyan. counsel appearing for the contesting respondent. This cost shall be paid by 14th December 1999. The Misc. Case is accordingly disposed of.

The, appeal shall be listed on 15th December, 1999, along with First Appeal No. 444/98.