
(2025) 10 JH CK 0080

Jharkhand HC

Case No: Civil Miscellaneous Petition No. 925 Of 2025

Shambhu Bhumij @
Shambhunath Bhumij

APPELLANT

Vs

Kalomani Mahatan D/o
Ghansi Mahatani

RESPONDENT

Date of Decision: Oct. 17, 2025

Acts Referred:

- Limitation Act, 1963 — Section 5

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Jageshwar Mahto, Mahesh Kr Mahto, Anup Kr. Agarwal, Mithilesh Singh

Final Decision: Dismissed

Judgement

Gautam Kumar Choudhary, J

1. The instant misc. appeal has been filed along with I.A. No. 11800 of 2025 for condonation of delay of 331 days in preferring the present restoration application for restoring S.A. No. 112 of 2013 which was dismissed for default for non-compliance of the peremptory order dated 06.05.2024.

2. The petitioner was the plaintiff in Original Partition Suit No. 37/1988 which was filed for partition. The said suit was dismissed vide judgment dated 29.11.1990 by learned Sub-Judge-II, Seraikella. Against the judgment of dismissal, Title Appeal No. 48/2003 was preferred which was also dismissed by the learned First Appellate Court vide judgment dated 12.03.2013. Against which, S.A. No. 112 of 2013 was preferred which has been dismissed for default, against which the instant civil misc. has been filed.

3. Heard learned counsel appearing on behalf of the petitioners in this interlocutory application (I.A. No. 11800 of 2025). which has been filed under Section 5 of the Limitation Act for condonation of delay of 331 days.

4. It is submitted by the learned counsel for the petitioner that the delay was not intentional and is attributed to the lapse on the part of the conducting counsel in the said case. After the petitioner-appellant found that the case had been dismissed for default, the file was taken and a fresh restoration application was filed by the present counsel appearing on behalf of the petitioners-appellants.

5. Having considered the submissions and on perusal of the record, it appears that on earlier occasion also, the second appeal was dismissed on 18.12.2015 for non-compliance to the order of the Court, which was restored vide order dated 22.03.2024 passed in C.M.P. No. 63 of 2016. After restoration of the appeal, the case was listed on 05.06.2024 and peremptory order was passed to remove the surviving defects within a week which was not complied with and consequently, said second appeal was dismissed for default. The progress of the second appeal speaks volumes about the manner in which the appeal has been prosecuted before this Court and the defects were not removed despite being given several opportunities. Appellants/ Petitioners cannot have an unlimited draught on the court hours for removing defects. As stated above the second appeal was earlier also dismissed, and restored. Even thereafter the defects were not removed. Grounds taken for condonation does not disclose sufficient cause for long delay of about one year in preferring the second restoration application.

6. Under the above stated position of facts, I do not find it a fit case for condonation of delay.

7. Accordingly, I.A. No.11800 of 2025 stands dismissed.

8. Under the circumstance, this Civil Miscellaneous Petition stands dismissed at the stage of admission for being barred by limitation.

Pending I.As., if any, stand disposed of.