

**(2000) 03 GAU CK 0019**

**Gauhati High Court (Agartala Bench)**

**Case No:** Regular Second Appeal No. 21 of 1999

Premananda Nama

APPELLANT

Vs

Basanta Kr. Ghosh and Another

RESPONDENT

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**Date of Decision:** March 14, 2000

**Acts Referred:**

- Limitation Act, 1963 - Section 5

**Citation:** (2000) 2 GLT 575

**Hon'ble Judges:** D. Biswas, J

**Bench:** Single Bench

**Advocate:** B. Das, A. Bhattacharjee and N. Majumdar, for the Appellant; A.M. Lodh, A. Lodh and M. Dutta, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

D. Biswas, J.

Heard Mr. B. Das, learned senior counsel assisted by Mr. A. Bhattacharjee, learned Counsel for the Petitioner and Sri A.M. Lodh, learned senior counsel for the Respondent.

2. This order relates to the petition u/s 5 of the Limitation Act for condonation of delay of 730 days in preferring the Second Appeal No. 21 of 1991.

3. The Respondent herein filed the Title Suit No. 3 of 1988 before the Court of learned Munsiff, Dharmanagar for an order of perpetual injunction in respect of the disputed land measuring 2 kanies 10 gandas. The said suit was decreed by the judgment dtd. 25.8.93 whereby the Defendant Appellant was restrained from disturbing the possession of the Plaintiff-Respondent. The Appellant challenged the judgment and decree passed by the learned Munsiff in Title Appeal No. 4 of 1993 in the Court of the learned Additional District Judge, North Tripura, Dharmanagar. The learned Additional District Judge dismissed the appeal by the judgment dtd. 1.4.1997 affirming the decree of perpetual injunction granted by the learned

Munsiff. Against this concurrent findings of the Courts below, the Appellant has preferred this Second Appeal No. 21 of 1999 on 10.11.99. Obviously the appeal has been filed after a lapse of 730 days, i.e. long after the expiry of period of limitation.

4. Mr. Das relied upon the decision of the Supreme Court in [N. Balakrishnan Vs. M. Krishnamurthy](#), [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others](#), [Ram Sumiran and Others Vs. D.D.C. and Others](#), and [Suk Das Vs. Union Territory of Arunachal Pradesh](#),

5. I have taken due note of the judgments relied upon by the learned senior counsel. The judgment in N. Balakrishnan, Appellant v. M. Krishnamurthy, Respondent (supra) was rendered by the Supreme Court while dealing with an exparte decree which was refused to be set aside on account of delay of 883 days. The Supreme Court condoned the delay on consideration that the learned advocate engaged by the party concerned failed to inform him that his application for setting aside the exparte decree was dismissed. However, in Collector, Land Acquisition, Anantnag and Anr., Appellants v. Mst. Katiji and Ors. Respondents (supra), the Supreme Court held that the expression "sufficient cause" is elastic enough to enable the Court to apply the law in meaningful manner which subserves the ends of justice. According to the Supreme Court, on the facts available in that case, there was sufficient cause for condonation of delay on justice-oriented approach. In Ram Sumiran and Ors., Appellants v. D.D.C. and Ors. Respondents (supra), the Supreme Court allowed a belated prayer for setting aside an abatement on consideration of the fact available in that case. Relevance of the decision in Suk Das and Anr., Appellant v. Union Territory of Arunachal Pradesh Respondent (supra) is however not discernible in the given situation of this case.

6. Mr. Lodh relying on a decision of the Supreme Court in P.K. Ramachandran, Appellant v. State of Kerala and Anr. Respondents AIR 1988 SC 2276 pleaded that the law of limitation has to be applied with all its rigour and the Courts have no power to extend the period of limitation on equitable grounds. In this case, the Supreme Court set aside the order of the High Court condoning the delay on the ground that at the relevant time the office of the Advocate General was fed up with so many arbitration matters equally important to the case before the Supreme Court.

7. There is no doubt as to the proposition of law with regard to condonation of delay. Delay must be explained with sufficient reason to enable the Court to condone the same. In the instant case I find that the Petitioners has pleaded that he could not file the appeal within the prescribed limitation as his learned Advocate did not inform him about the judgment of the first appellate Court. He also pleaded that he is a poor man while the opposite party is a moneyed man and that his learned Counsel was handed over the certified copy of the judgment and decree of the first appellate Court only on 1.9.97. In Para-6 of his petition, he has made it clear that he came to know of the judgment against him from one Sukha Singh and then obtained the copy of the judgment and decree on 10.4.99. This means that the

Petitioner was aware of the decree passed against him on 10.4.99. But he preferred this petition only on 10.11.99 i.e. after lapse of seven months. There is no legally acceptable explanation to this delay of seven months from the date of knowledge. Therefore, I am constrained to hold that the petition deserves no consideration for want of sufficient and adequate ground as contemplated u/s 5 of the Limitation Act.

8. It has to be kept in mind that this Second Appeal has been preferred against the concurrent judgment of the Courts below. The Court Cannot be oblivious of the suffering of the other party as well.

9. Considering the nature of questions sought to be projected as substantial questions of law at page-10 of the Memorandum of appeal, I am of the opinion that it would be in the interest of justice not to allow condonation of the long delay, specially when there is no proper explanation for delay of seven months subsequent to the date of knowledge of the decree of the first appellate Court The petition has no merit and hence it is dismissed. Simultaneously the Second Appeal No. 21 of 1999 being barred by limitation is also dismissed. Along with this, the Civ. Misc. Appln. No. 43/99 for stay of the impugned judgment and decree is also dismissed.

10. No order as to costs.