
Funia Mahatani and Others Vs Ledo Mahato and Others

Appeal from Original Order No. 64 of 1993 (R)

Court: Jharkhand High Court

Date of Decision: Sept. 12, 2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 41 Rule 21#Constitution of India, 1950 " Article 123#Limitation Act, 1963 " Section 5

Hon'ble Judges: Gurusharan Sharma, J

Bench: Single Bench

Advocate: M.M. Banerjee, for the Appellant; S.N. Das, for the Respondent

Final Decision: Allowed

Judgement

Gurusharan Sharma, J.

Respondent No. 1 filed Title Suit No. 138 of 1971 which was contested by the appellants and was dismissed on

2.1.1976. Respondents, therefore, filed Title Appeal No. 12 of 1976, which was disposed of on 24.9.1987 exports. The appellants came to

know about it on 15.6.1988 and thereafter filed an application under Order XLI, Rule 21 of CPC on 26.7.1988 for rehearing of the appeal, which

was registered as Misc. Case No. 14 of 1988.

2. On the basis of materials brought on record of the said Misc. Case. Additional District Judge found that appeal notice was not served on the

respondents and as such the appeal was disposed of behind their back. However, since there was delay of 10 days in filing the application under

Order XLI, Rule 21 of the Code, from the date of the knowledge of the ex. parte judgment and decree passed in the said appeal though there was

a separate petition filed for condonation of the said delay, u/s 5 of the Limitation Act. 1963, the Additional District Judge, dismissed the

Miscellaneous Case with the following observation :

In my opinion, this Court cannot extend the period of limitation beyond thirty days as per Section 5 of the Limitation Act.

3. In my opinion, the Additional District Judge failed to appreciate the provisions of Section 5 of the Limitation Act. It is true that Article 123 of the

Act provides 30 days period for filing an application under Order XLI. Rule 21 of the Code, either from the date of ex parte judgment and decree

or from the date of knowledge. If such an application was filed after expiry of the period of limitation of thirty days, the party concerned was

entitled to file a petition u/s 5 of the Limitation act giving the reasons for which the delay was caused and the Court is empowered to condone such

delay, if it was sufficiently explained.

4. I, therefore, set aside the impugned order and also order dated 24.9.1987, whereby Title Appeal No. 12 of 1976 was disposed of ex parte and

direct the Court concerned to rehear the said appeal and dispose it of in accordance with law. Parties undertake to appear in the Court below by

15th October, 2001, on which date in their presence, a firm date of hearing of the appeal shall be fixed.

5. In the result, this appeal is allowed with the above observation/directions. There shall be no order as to costs. Let, the lower Court records be

sent down immediately.

6. Appeal allowed.