



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1271 of 2022

(An application under Article 227 of the Constitution of India)

Laxmi Gouda and others ***Petitioners***

-versus-

The District Collector, Ganjam and others ***Opp. Parties***

For Petitioners : Mr. Budhadev Routray, Senior Advocate
being assisted by Mr. Jagadish Biswal,
Advocate

For Opposite Parties : Mr. Ajodhya Ranjan Dash,
Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

Date of Hearing : 06.09.2024
Date of Judgment : 22.10.2024

JUDGMENT

1. This matter is taken up through hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 22nd October, 2022 (Annexure-4) passed in CMA No.5 of 2021 (arising out of RFA No.12 of 2021), whereby learned Additional District Judge, Chatrapur, Ganjam allowed an application under Section 5 of the Limitation Act, 1963 and thereby condoned the delay of 1774 days in filing the Appeal (RFA No.12 of 2021) by the Opposite Parties subject to payment of cost of Rs.10,000/-.



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3. Case of the Petitioners as narrated by Mr. Routray, learned Senior Advocate is that assailing the judgment and decree dated 30th June, 2015 and 15th July, 2015 respectively passed by learned Civil Judge (Senior Division), Chatrapur in CS No.95 of 2014, the Opposite Parties (Government functionaries) filed RFA No.12 of 2021, which is at present pending in the Court of learned Additional District Judge, Chatrapur, Ganjam. As there was a huge delay in filing the Appeal under Section 96 CPC, an application under Section 5 of the Limitation Act read with Order XLI Rule 3-A CPC was also filed along with the memorandum of appeal.

3.1 The suit was filed by one Siba Gouda for declaration of his right, title, interest and confirmation of possession over the suit schedule property, for issuance of ROR in respect of the suit property in his favour and also for a decree of permanent injunction restraining the Defendants–State functionaries from evicting and interfering with his possession over the suit property. The suit land pertains to Khata No.583, Plot No.1676 to an extent of Ac.0.035 decimal, Plot No.1678 to an extent of Ac.0.135 decimal, Plot No.1677 to an extent of Ac.0.045 decimal, Plot No.1679 to an extent of Ac.0.055 decimal, Plot No.1680 to an extent of Ac.0.215 decimal, Plot No.1681 to an extent of Ac.0.160 decimal, Plot No.1684 to an extent of Ac.0.067 decimal, Plot No.1692 to an extent of Ac.0.077 decimal, Plot No.1691 to an extent of Ac.0.087 decimal, Plot No.1693 to an extent of Ac.0.050 decimal and Plot No.1690 to an extent of Ac.0.050 decimal admeasuring a total area of Ac.0.978 decimal in mouza Nuagada



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under Hinjlicut tahasil in the district of Ganjam (hereinafter referred to as 'the suit land').

3.2 The suit was decreed in part on contest vide judgment dated 30th June, 2015 by learned Civil Judge (Senior Division), Chatrapur against the Defendants declaring the Plaintiff, namely, Siba Gouda to be a tenant over the suit property and his possession over the suit land was confirmed. The Defendants were permanently restrained from interfering with the peaceful possession of the Plaintiff over the suit land. The Opposite Parties, namely, Government functionaries preferred the Appeal beyond the statutory period. There was a delay of 2336 days in filing the Appeal. Accordingly, the Opposite Parties filed an application under Section 5 of the Limitation Act read with Order XLI Rule 3-A CPC for condonation of delay in filing the Appeal. Learned Additional District Judge, Chatrapur, vide order dated 22nd October 2022 (Annexure-4), allowed the application for condonation of delay in filing the Appeal subject to payment of cost of Rs.10,000/- to the present Petitioners (Respondents therein) on or before 22nd November, 2022. Assailing the said order under Annexure-4, this CMP has been filed by the Respondents/Petitioners. Needless to say that the Petitioners are legal heirs of the Plaintiff late Siba Gouda and have been brought on record during pendency of the Appeal.

4. Mr. Routray, learned Senior Advocate appearing for the Petitioners submitted that the impugned order suffers from non-consideration of material facts on record. Although there is a delay of 2336 days in filing the Appeal, learned Appellate Court taking into consideration the ratio in Miscellaneous Application No.665 of 2021



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arising out of *Suo Motu* Writ Petition (Civil) No.03 of 2020 reported in 2021 (II) OLR 779 (SC) excluded the period from 15th March, 2020 to 2nd October, 2021 and calculated the delay as 1774 days in filing the Appeal. It is submitted that although the appellate Court held that the delay in filing the Appeal occurred due to laches of the then revenue officials, but holding that due to such laches of the Public Officers, public at large should not be debarred from getting justice, allowed the petition for condonation of delay. Learned appellate Court although referred to different case laws relied upon by the Petitioners/ Respondents but did not discuss the applicability of the same to the case at hand. Brushing aside the ratio decided therein, learned appellate Court came to hold that the claim of the Plaintiffs/Petitioners is in respect of a public property, i.e., the suit land and refusal to condone the delay would result in grave miscarriage of justice.

4.1 Mr. Routrary, learned Senior Advocate submitted that when there is admittedly laches on the part of the State functionaries in preferring the Appeal and a right thereby created in favour of the Petitioners, it should not be taken away lightly by condoning the delay of 2336 days in filing the Appeal. In this regard, he placed reliance on the following judicial pronouncements: -

(i) State of Odisha and others Vs. Sumitra Das and others, reported in 2021 (II) ILR-CUT-241

(ii) Pathapati Subba Reddy (Died) by LRs. And others Vs. Special Deputy Collector (LA) [SLP (Civil) 31248 of 2018]; reported in 2024 SCC OnLine SC 513



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(iii) State of Uttar Pradesh and others Vs. Subha Narain and others [SLP (Civil) Diary No.25743 of 2020 decided on 22nd January, 2021]; *reported in* (2022) 9 SCC 266

(iv) Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi and others [Civil Appeal No.7696 of 2021 decided on 16th December, 2021; *reported in* (2021) 18 SCC 384

(v) State of Odisha and others Vs. Bishnupriya Routray and others [FAO No.86 of 2013 decided on 22nd April, 2014] *reported in* 2014(II) ILR-CUT 847

Therefore, he submitted that the impugned order being unreasoned and non-speaking one is liable to be set aside.

5. Mr. Dash, learned AGA vehemently objected to the above submission. It was his submission that learned Additional District Judge observed that delay though occurred due to lackadaisical approach of the revenue officials and their frequent transfers, yet keeping in mind the benefit that would accrue to the public at large, condoned the delay holding that for the laches of the Public Officer, a public interest should not suffer. It was also held by learned Additional District Judge that delay was neither intentional nor deliberate. While condoning the delay, learned appellate Court also kept in mind the loss that the Petitioners/Respondents would suffer and compensated the same by directing the Opposite Parties to pay a cost of Rs.10,000/- to the Petitioners.



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5.1 Referring to affidavits filed by the Tahasildar, Hinjili on 11th July, 2023 and 8th January, 2024, Mr. Dash, learned AGA submitted that due to bifurcation of Chatrapur tahasil, the case records concerning the suit land was firstly transferred to Purusottampur tahasil. Thereafter, Purusottampur tahasil was bifurcated and the concerned case record was transferred to Hinjili tahasil. There was also frequent transfer of revenue officials during that period. During 2015 to 2021 nine tahasildars were transferred. Thus, during their short tenure at Hinjili tahasil and in absence of any intimation regarding disposal of CS No.95 of 2014, proper attention could not be given to file the Appeal in time. In addition to the above, due to cyclone 'Fani' in the year 2019 followed by outbreak of COVID-19 pandemic, tahasildars posted during the said period remained pre-occupied with emergent public duty under the direct supervision of the higher authorities. When the original Plaintiff, namely, Siba Gouda applied for ROR, he never mentioned about the judgment passed in CS No.95 of 2014. However, Tahasildar, Hinjili, by order dated 31st January, 2019, rejected the application for mutation of the land in favour of said Siba Gouda against which an Appeal was preferred. Tahasildar, Hinjili on 25th March, 2021 received an order dated 16th March, 2021 passed by Additional Sub-Collector, Chatrapur in Mutation Appeal No.5 of 2019 by which the case was remanded for fresh adjudication by Tahasildar, Hinjili referring to the judgment passed in CS No.95 of 2014. On receipt of the said order, Tahasildar, Hinjili contacted learned AGP, Chatrapur and thereafter steps were taken to file Appeal against the said judgment and decree. Thus, learned Additional District Judge has committed no error in holding



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that the delay in filing the Appeal was neither deliberate nor intentional. He further submitted that an endeavour should be made by the Court to adjudicate the litigation on merit and not on mere technicalities including the ground of delay. Since larger public interest is involved in respect of the suit property, learned Additional District Judge adopted a pragmatic approach and condoned the delay so that the Appeal can be disposed of on merit. In the suit, the Plaintiff claims right and title over the suit property by adverse possession. As such, no error of law has been committed by learned Additional District Judge, Chatrapur in condoning the delay in filing the Appeal.

5.2 In support of his submission, Mr. Dash, learned AGA relied upon the following decisions: -

(i) Sheo Raj Singh (Dead) through Lrs. and others. vs Union of India and another, reported in (2023) 10 SCC 531;

(ii) State of Manipur and others Vs. Koting Lamkang, reported in (2019) 10 SCC 408;

(iii) State of Orissa and four others Vs. Kantilata Sarangi, reported in, 2008 (II) OLR 942;

He, therefore, submitted that the CMP being devoid of any merit is liable to be dismissed.

6. Heard learned counsel for the parties. Perused the case record as well as the case laws relied upon by learned counsel for the parties.

7. Civil Suit No.95 of 2014 was filed by one Siba Gouda for declaration of his right, title, interest and confirmation of possession



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over the suit land as well as decree of permanent injunction against the Defendants, namely, Government functionaries by restraining them from interfering with the possession of said Siba Gouda. Petitioners are legal heirs of said Siba Gouda, who are brought on record on the death of said Siba Gouda. The suit was partly decreed on contest vide judgment dated 30th June, 2015 (Annexure-1) passed by learned Civil Judge, Senior Division, Chatrapur declaring that the Plaintiff, namely, Siba Gouda is a tenant over the suit land. His possession over the suit land was confirmed and the Defendants are permanently restrained from interfering with the peaceful possession of the Plaintiff over the suit land without taking recourse of law. Assailing the said judgment and decree dated 30th June, 2015 and 15th July, 2015 respectively passed in the suit, the Opposite Parties-Government functionaries preferred RFA No.12 of 2021, which is at present pending in the Court of learned Additional District Judge, Chatrapur. Stamp Reporter pointed out a delay of 2336 days in filing the Appeal. As such, an application (CMA No.5 of 2021) was filed by the Appellants/Opposite Parties for condonation of delay in filing the Appeal. In the petition for condonation of delay (Annexure-2), it was stated that after the judgment and decree was passed, the State Authorities dealing with the matter sought for clarification from the higher authorities to file Appeal. At the relevant time, Chatrapur tahasil was bifurcated and the case record concerning the suit land was transferred to Purusottampur tahasil. Subsequently, Purusttoampur tahasil was also bifurcated and concerned case record was transferred to Hinjili tahasil under which the suit land situates at present. The then incumbents of the office of Tahasildar could not know about the matter due to their engagement in



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emergent public works. It was submitted by Mr. Dash, learned AGA that in the year 2019, Cyclone 'Fani' hit the locality and created devastation. Further in the year 2020 onwards, pandemic of COVID-19 completely jeopardized and paralyzed the normal functioning of the government offices including the office of Tahasildar, Hinjili. The matter came to the notice of Tahasildar, Hinjili when he received an order of remand from the office of the Additional Sub-Collector, Chatrapur. Mr. Dash, learned AGA referring to the affidavit dated 8th January, 2024 filed by the Tahasildar, Hinjili in this CMP submitted that on 25th March, 2021, the Tahasildar Hinjili received a copy of the order dated 16th March, 2021 from the Court of Additional Sub-Collector, Chatrapur passed in Mutation Appeal No.5 of 2019 remanding the Mutation Case for fresh adjudication referring to the judgment and decree passed in CS No.95 of 2014. On receipt of the said order, the Tahasildar, Hinjili came to know about the judgment and decree passed in the aforesaid suit and took steps to file the Appeal seeking clarification/opinion of the Additional Government Pleader, who advised to seek opinion of learned Advocate General. Thus, the Tahasildar wrote to the office of learned Advocate General of Odisha seeking for opinion and sought for clarification from the Authority with regard to settlement of land in urban area. Such clarification was not received by the office of the Tahasildar, Hinjili. As such, delay occurred in filing the Appeal against the judgment and decree passed in CS No.95 of 2014. It was also submitted that in addition to the above, there was frequent change of tahasil and tahasildars for which clarification could not be obtained from the higher authorities to file Appeal in time within the prescribed period of limitation. Counter



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affidavit to the said petition for condonation of delay under Annexure-2 was filed by the Petitioners who were Respondents in the Appeal. In their Counter affidavit at Annexure-3, it was stated that CS No.95 of 2014 was decreed on contest in presence of the State Counsel on 30th June, 2015. Thus, an Appeal should have been filed on or before 30th July, 2015 excluding the days spent for obtaining certified copy. No step was taken by the State Authorities dealing with the matter. Sufficient cause was also not shown by the Appellants/Opposite Parties for condonation of delay. No special treatment should be given to the State functionaries in the matter of condonation of delay, as the Limitation Act neither creates any such classification nor does it contain any provision to give special treatment to the Government functionaries in the matter of condonation of delay. It was also stated, *inter alia*, that the delay in filing the Appeal was not properly explained by providing detail particulars in support of the averments made in the petition for condonation of delay. There was negligence and deliberate inaction on the part of the revenue officers more particularly the Tahasildar and his predecessors in filing the Appeal. As it appears from the averments made in the petition under Annexure-2, the Tahasildar, Hinjili was aware of the judgment and decree passed in the suit. Since the judgment and decree passed in the suit was not implemented, the Petitioners/Respondents approached this Court in W.P.(C) No.17180 of 2021 for a direction to obey the orders of Additional Sub-Collector passed in Mutation Appeal No.5 of 2019. In spite of the same, the Tahasildar did not carry out the order, which compelled the Petitioners to file Contempt petition before this Court. Thus, the revenue authorities had notice of the judgment and decree passed in CS No.95



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of 2014 throughout, but due to sheer negligence and latches on their part, they did not prefer the Appeal in time. Further, the plea of bifurcation of tahasils and Cyclone 'Fani' as well as pandemic of COVID-19 are sheer excuses not explanation for condonation of delay.

8. Taking note of the rival contentions made by the parties before learned Additional District Judge, Chatrapur, it appears that after the judgment and decree in CS No.95 of 2014 was passed, the concerned Tahasildar intimated the higher authorities for clarification. Although a plea of bifurcation of tahasils was taken, but no detail particulars of the same was given either in the petition for condonation of delay or in the affidavit dated 11th July, 2023 as well as 8th January, 2024 filed in this CMP. In addition to the above, it appears from the Judgment (Annexure-1) passed in CS No. 95 of 2014 that Tahasildar, Hinjili has been arrayed as Defendant No. 3 to the suit. Thus, bifurcation of tahasil, if any, had already taken place before the judgment in the suit was passed. As such, bifurcation of Chatrapur tahasil and subsequently Purusottampur tahasil and creation of Hinjil tahasil are immaterial for causing delay in filing the Appeal, as alleged, as those cannot be said to have created any impediment in filing the Appeal in time. No detail particulars of the communication made to the higher authorities either for clarification or for opinion, as stated in the petition for condonation of delay (Annexure-2), has also been given. It is, however, stated in the affidavit dated 8th January, 2024 that on 25th March, 2021, the Tahasildar, Hinjili received copy of the order dated 16th March, 2021 passed by the Additional Tahasildar, Chatrapur in Mutation Appeal No.5 of 2019. Even after receipt of the said



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letter/order, immediate step was not taken to file the Appeal, as would be apparent from the averments made therein. Calamities like Cyclone ‘Fani’ occurred in the year 2019 and outbreak of COVID-19 are of no significance for causing delay in filing the appeal, as the judgment and decree was passed in the year 2015, i.e., on 30th June, 2015 and 15th July, 2015 respectively. By that time, four years had already elapsed.

9. Learned Additional District Judge excluded the period of pandemic of COVID-19 from the period of delay relying upon the observations made in *Suo Motu* Writ Petition (Civil) No.3 of 2020. Since the limitation period had already expired five years before outbreak of COVID-19, the ratio in *Suo Motu* Writ Petition (Civil) No.3 of 2020 is of no assistance to the State Authorities-State functionaries. It is not the quantum of delay that matters but the explanation given/cause shown for condonation of delay, which is relevant for consideration. On a plain reading of the petition for condonation of delay filed under Section 5 of the Limitation Act read with Order XLI Rule 3-A CPC no cause much less any sufficient cause has been given for condonation of inordinate delay in filing the Appeal. In the case of the ***Postmaster General and others Vs. Living Media India Limited and another***, reported in (2012) 3 SCC 563, it is held as under:-

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be



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condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.*

29. *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.*

30. *Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.*

Accordingly, the appeals are liable to be dismissed on the ground of delay”

In the case of ***Sumitra Das and others (supra)***, this Court relying upon the ratio in the case of ***Chief Postmaster General (supra)*** has observed at para-5, relevant portion of which is as under:-

“5.5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.



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6. *We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.*

7. *We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.*

8. *Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner- State of Rs.25,000/- (Rupees twenty-five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time."*

In the aforesaid case laws, the Hon'ble Supreme Court as well as this Court has sent a signal to the Government officials to be alert and diligent in exercising their duties and responsibilities, which includes the responsibility to move Court within the statutory period. It is not the case of the Opposite Parties that they were unaware of the judgment and decree passed in CS No.95 of 2014. Their approach to prefer an Appeal was an outcome of sheer negligence and indifferent



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attitude to respect the verdict of a competent Court of law. The explanation offered, as stated above in the petition for condonation of delay, cannot be termed as ‘cause’ much less any ‘sufficient cause’ to condone the inordinate delay. These are mere excuses and not explanation. In the case of **Krushna Chandra Behera Pradhan and another Vs. Government of Odisha**, reported in 2024 (II) ILR-CUT-936, this Court relying upon the ratio in the case of **Sheo Raj Singh (supra)** has explained the difference between ‘explanation’ and ‘excuse’, which reads as under:-

“7. From an analysis of the submissions made by learned counsel for the parties and on perusal of the record more particularly the ground taken in the petition under Order IX Rule 13 CPC under Annexure-6, it is crystal clear that those are not the explanations but mere excuses of the State Government. As held in *Sheo Raj Singh (supra)*, there is a distinction between ‘explanation’ and ‘excuses’. It is held therein that condonation of delay being a discretionary power available to Courts, exercise of discretion must necessarily depend upon sufficiency of the cause and degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being offered, delay of shortest range may not be condoned whereas in certain other cases delay of long period can be condoned if the explanation is satisfactory and acceptable. Of course, Courts must distinguish between ‘explanation’ and ‘excuse’. Explanation is designed to give someone all of the facts and lay out a cause for something. It helps clearly the circumstances of a particular event and allows the person to point out that something that has happened is not his fault. Care must however be taken to distinguish an ‘explanation’ from an ‘excuse’. Although common people tend to see ‘explanation’ and ‘excuse’ in same parlance and struggled to find out the difference between the two, but the Court of law has the obligation to find out that distinction which though fine, is real. An excuse is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something just an ‘excuse’ would imply that ‘explanation’ offered is believed not to be true. Thus, the Hon’ble Supreme Court has observed that length of delay is not a matter of consideration but the explanation that is offered has a



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dominant role in considering the case of the parties in taking a decision for condonation of delay. The Hon'ble Supreme Court has also observed that a delay whatsoever minimal may be, should not be condoned on a mere excuse. In the instant case, on a bare perusal of the petition under Order IX Rule 13 CPC, it appears that the Government has admitted its negligence stating that for the negligence of the officials, the State should not suffer. The officials being employees of the State, State Government has a vicarious liability for the loss caused by its officials. Further, no explanation for condonation of delay much less any sufficient cause is offered in the petition under Order IX Rule 13 CPC, only because an ex-parte decree has been passed declaring right, title and interest of the Petitioners over a valuable piece of land, the same cannot be a ground to condone the inordinate and unexplained delay of more than 12 years."

(underlined for emphasis)

In the aforesaid case law, this Court relying upon the case of ***Sheo Raj Singh (supra)***, held that there is a distinction between 'explanation' and 'excuse'. Explanation is designed to give someone all of the facts and lay out a cause for something. It helps clearly the circumstances of a particular event and allows the person to point out that something that has happened is not his fault. An excuse on the other hand is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something just an 'excuse' would imply that 'explanation' offered is believed not to be true. In ***Sheo Raj Singh (supra)***, it has also been stated the length of delay being immaterial sometimes, due to want of sufficient cause being shown or an acceptable explanation being offered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable.



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10. Thus, in the instant case, the Court should not delve into the period of delay occurred in filing the Appeal, but the explanation that has been offered for such delay is material for consideration. As discussed earlier, the so-called explanation for condonation of delay are mere excuses and a defensive plea has been taken by the Tahasildar, Hinjili to save his skin by shifting the responsibility to his predecessors without explaining what the Government functionaries did during all the aforesaid period to file the Appeal in time. In view of the above, the case laws cited by Mr. Dash, learned AGA, as stated above, are of no assistance to him.

11. By efflux of time, a right has accrued in favour of the Petitioners/Respondents by virtue of the judgment and decree passed in CS No.95 of 2014. The same cannot be taken away so lightly without even discussing the objection raised by them opposing condonation of delay as has been done by learned Additional District Judge, Chatrapur. Exclusion of period of COVID-19 is immaterial and inconsequential for consideration of petition to condone the delay in filing the Appeal, as the statutory period for filing the appeal had expired four years before the outbreak of COVID-19 pandemic.

12. No doubt, public interest plays a vital role while considering the petition for condonation of delay, but that does not take away the responsibility of the party seeking for condonation of delay to provide sufficient cause for the same. In the case of ***Sumitra Das (supra)*** as well as in ***Chief Postmaster General (supra)***, it has been



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held that law shelters everyone under the same umbrella and should not be swirled for the benefit of a few. In the instant case, it appears that learned Additional District Judge had categorically held that there were laches on the part of the revenue authorities in filing the Appeal in time. Having observed so, learned Additional District Judge could not have proceeded further to condone the delay in filing the Appeal, as the finding of laches on the part of the revenue authorities itself makes it clear that no sufficient cause has been shown by the Government functionaries for condonation of delay.

13. The Government might suffer for refusal of the prayer to condone the delay in filing the Appeal, but that cannot be a ground to consider the application in favour of the Government functionaries who are at fault in not preferring the Appeal in time. It is open to the Government to take appropriate action and recover the loss, if any, caused for the laches of their Officers/staff, but that cannot be a ground to drag the poor litigants / Petitioners to Court in the garb of public interest.

14. In view of the discussions above, I am of the considered view that Opposite Parties have not made out any ground much less any sufficient ground for condonation of delay in filing the Appeal, i.e., RFA No.12 of 2021 pending in the Court of learned Additional District Judge, Chatrapur.

15. Accordingly, order under Annexure-4 is set aside and the CMP is allowed. Consequentially, the petition for condonation of delay in CMA No.5 of 2019 is dismissed and the Appeal, i.e., RFA



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No.12 of 2021 is also dismissed. However, in the facts and circumstances, there shall be no order as to costs.

Issue urgent certified copy of the judgment on proper application.

(K.R. Mohapatra)
Judge

High Court of Orissa, Cuttack
Dated the day of October, 2024/s.s.satapathy