IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2025
(ARISING FROM SLP(CIVIL) NO(S)(C) 24443/2024)

KUMARI SAHU ... APPELLANT(S)

VERSUS

BHUBANANANDA SAHU & ORS. ... RESPONDENT(S)

O R D E R

1. Leave granted.
2. The instant appeal has been preferred by the appellant against the dismissal of Regular Second Appeal No. 202 of 2022 by the High Court of Orissa vide order dated 10.01.2023 on the sole ground of delay of 225 days in preferring such appeal being non-condonable.
3. The appellant is the original plaintiff in Civil Suit bearing C.S. 71 of 2013 filed before the Ld. Senior Civil Judge, Chatrapur, wherein the appellant had sought declaration as herself being the legally married wife of Late Raj Kishore Sahoo and to further declare respondents no. 1, 2 and 3 are the sons and

daughters of Late Raj Kishore Sahoo. The appellant had also sought a declaration that the instant respondents no. 4 and 5 are respectively not the legally married wife and daughter of Late Raj Kishore Sahoo. The appellant's suit was dismissed by the Senior Civil Judge *vide* order dated 25.07.2016.

4. The appellant preferred first appeal against the dismissal of suit before the Additional District Judge, Chatrapur being RFA No. 31 of 2016, which was also dismissed vide order dated 11.10.2021.

5. The appellant preferred a second appeal on 22.08.2022 against judgment dated 11.10.2021 before the High Court, being RSA No. 202 of 2022. Since there was a delay of 225 days in filing the said RSA, the appellant had also filed a detailed application for condonation of delay being I.A. No. 885 of 2022.

6. However, the High Court, vide the impugned order, held that the explanation provided by the appellant for such long delay in presenting the memorandum of Second Appeal is not at all satisfactory so as to say that the appellant was prevented by sufficient cause for not filing the appeal in time. Hence, the I.A. No. 885 of 2022 was rejected and consequently, the RSA

stood dismissed on ground of delay.

7. Aggrieved, the appellant is before us.

8. We have heard learned counsel for the parties and perused the material on record.

9. In I.A. No. 885 of 20222 filed by the appellants before the High Court seeking condonation of delay, it was stated that the appellant was informed by her Counsel sometime in July, 2022 about the dismissal of her first appeal vide order dated 11.10.2021, after which she took steps for filing the RSA which was duly filed on 22.08.2022. It was further stated that the appellant who is a homemaker and a rustic woman could not prefer the appeal in time due to laches on part of her Counsel and the said delay was not deliberate in nature. It was submitted in the said IA as well as contended before us that the appellant should not be made to suffer on account of her Counsel's fault.

10. We are aware of the caution that needs to be exercised in matters relating to condonation of delay of longer durations. However, it must be noted that balancing of scales of justice becomes imperative when it comes to such matters, especially given the socio-economic background of a large

number of India's population who approach these doors of justice as litigants.

11. We find it relevant to produce here a paragraph from **Rafiq and Another v. Munshilal and Another**[1], a case which had a very similar factual matrix regarding delay due to Counsel's fault, the following was observed:

> "3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. **Even if we do not put our seal of imprimatur on the alleged practice by**

[1] (1981) 2 SCC 788

dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs 200 should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr A.K. Sanghi."

(Emphasis is mine)

12. Even though the above-quoted case law is from the year

1981, we cannot deny the fact that the ground reality of a considerable proportion of litigants being completely dependent on their counsel remains the same, especially in regions with lower economic and educational prowess.

13. After a perusal of the impugned order which also produced the contents of the appellant's I.A. seeking condonation of delay, we find that the appellant-plaintiff had sufficiently explained the reasons leading to a delay of 225 days in preferring the RSA. It must be noted that once the appellant became aware about the dismissal of her first appeal, she exhibited haste and preferred the said RSA in August, 2022 itself. Therefore, given the facts and circumstances of the case, we find that the delay in preferring RSA No. 202 of 2022 deserved to be condoned.

14. Accordingly, the appeal is allowed.

15. The delay in filing RSA No. 202 of 2022 before the High Court of Odisha is condoned. Thereby, the I.A. No. 885 of 2022 filed by the appellant under Section 5 of the Limitation Act, 1963 stands allowed.

16. The appeal be registered on the regular side. We request the High Court to decide the same as expeditiously as possible.

The High Court shall proceed to consider the appeal on its own merits in accordance with law.

17. Pending application(s), if any, shall stand disposed of.

..... .J.
[VIKRAM NATH]

..... .J.
[SANDEEP MEHTA]

NEW DELHI;
JANUARY 31, 2025.