

20-11761
order of 24

Present: - Kumar Amit Manu.
Additional District Judge-IV,
Purnea.

Title Appeal - 31 of 2015

[CIS 37 of 2015]

1) Most Siromani Devi

..... Appellant

Vs.

1) Prakash Yadav

..... Respondent.

[Order on Petition dated 19.08.2016 filed under Order 41 Rule 22 of cpc
for condonation of delay in filing appeal]

For the Appellant - Sri M.Kumar, Ld Advocate, Purnea

For the Respondent - Sri B.P.Mishra, Ld Advocate, Purnea

ORDER

Date-04th of October, 2021

04.10.2021 This case has been placed before me for order (Virtual court) on petition dated 19.08.2016 filed by the respondent wherein a prayer has been made to condone the delay of more than five months in filing the cross objection.

The Learned counsel has taken the ground of invoking such limitation that the respondent was on bonafide believe that since the suit was dismissed, all issues must have been decided in favour of defendant. However on close scrutiny it was found that issue no. V and issue No. VI has been decided against them. On the other hand, reply to such petition has been filed by Appellant. The reply is voluminous and lengthy but crux of the reply is that the limitation period is only one month from the date of service and in the instant appeal they have received notice on 13.03.2016. Thus the objection petition must have been filed by 12.04.2016 however the same has been filed on 19.08.2016 much after one month. The appellant has also referred to other set of litigation going on between parties where this respondent has admitted in written statement that issue no. V and VI have been decided against them. Such admission has been made on 08.12.2015. It is also submitted that the respondent has not disclosed when he has applied for certified copy of judgment of court below and when he has received it. On these grounds appellants have objected to this cross objection.

Heard both sides and perused the record of the case. Before discussion further it is necessary to produce the relevant provision. Order 41 Rule 22 of CPC reads as under:- (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the

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finding against him in the Court below in respect of any issue ought to have been in favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the date fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Perusal of record show that there is delay of more than five months in filing cross objection. Order 41 rule 22 of cpc provides that appellant court, in the interest of justice for sufficient cause may **allow further** time if it deems fit. In order to avoid multiplicity of suit and appeal as well as to avoid conflicts of opinion, it is in the interest of justice that such cross objection is heard along with the main appeal. Procedures are handmaid of justice. The court must generally lean towards allowing any cause which favours the substantive rights of the parties. The delay of five months can be compensated by awarding cost as such keeping in mind the aforesaid discussion, the petition for condoning of delay is hereby allowed on payment of cost of **Two Thousand to be paid to other side** within two weeks

ORDER

On the analysis of above discussion, the petition dated 19.08.2016 is hereby **allowed** with cost of two thousand rupees to be paid to other side within two weeks of this order. Put up on 23.10.2021 for hearing.

04/10/21
Kumar Amit Manu
ADJ IV, Purnea