

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.266 of 2012

In
C.R. 986 of 2009

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1. M/S Baijnath Prasad Banarsi Lal Cloth Merchant Through Its Proprietor,
Pawan Kumar Modi S/O Late Banarsi Lal Modi R/O Mohalla- Sutapatti,
Sarayaganj, Ward No. 20 (New), P.O., P.S. & Town - Muzaffarpur,
District- Muzaffarpur

.... Petitioner/s

Versus

1. Smt. Triveni Devi Barolia W/O Sri Prahlad Rai Barolia R/O Mohalla-
Sutapatti, Sarayaganj, Ward No. 20 (New), P.O., P.S. & Town -
Muzaffarpur, District- Muzaffarpur
2. Prahlad Rai Barolia S/O Late Harshmal Barolia R/O Mohalla- Sutapatti,
Sarayaganj, Ward No. 20 (New), P.O., P.S. & Town - Muzaffarpur,
District- Muzaffarpur
3. Ramesh Kumar Barolia S/O Sri Prahlad Rai Barolia R/O Mohalla-
Sutapatti, Sarayaganj, Ward No. 20 (New), P.O., P.S. & Town -
Muzaffarpur, District- Muzaffarpur
4. Prakash Kumar Barolia S/O Sri Prahlad Rai Barolia R/O Mohalla-
Sutapatti, Sarayaganj, Ward No. 20 (New), P.O., P.S. & Town -
Muzaffarpur, District- Muzaffarpur
5. Kishan Kumar Barolia S/O Sri Prahlad Rai Barolia R/O Mohalla-
Sutapatti, Sarayaganj, Ward No. 20 (New), P.O., P.S. & Town -
Muzaffarpur, District- Muzaffarpur
6. Pramod Kumar Barolia S/O Sri Prahlad Rai Barolia R/O Mohalla-
Sutapatti, Sarayaganj, Ward No. 20 (New), P.O., P.S. & Town -
Muzaffarpur, District- Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr. Advocate.
For the Respondent/s : Mr. Manojeshwar Pd. Sinha, Advocate.
Mr. Ratan Kumar Sinha, Advocate.
Mr. Madhokar Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

12 26-08-2015

Heard Mr. Shashi Shekhar Dwivedi learned

senior counsel appearing on behalf of the petitioner and Mr.

Manojeshwar Pd. Sinha learned counsel appearing for the opposite

party.



This review application has been filed against the judgment and order dated 07.02.2012 passed in Civil Revision No. 986 pf 2009. The I.A. No. 7200 of 2012 for condonation of delay in filing the revision application has also been filed. Earlier by order dated 24.06.2015 the limitation petition was directed to be considered at the time of admission.

The Civil Revision No. 986 of 2009 was filed under section 14(8) of the Bihar Buildings (Lease, Rent and Eviction) Control Act 1982 by the review petitioner. It would be pertinent to mention here that Eviction Suit No. 30 of 2006 was filed against the review petitioner by the opposite party seeking his eviction from the suit premises on the ground of personal necessity. After the judgment and order of eviction, the aforesaid civil revision application was filed. By order dated 7.02.2012 the aforesaid civil revision application was dismissed after hearing the parties.

The present review application has been filed by the petitioner praying for review of the judgment and order passed in the aforesaid civil revision application on the assertion that certain subsequent development had taken place therefore, this review application has been filed.

Mr. Dwivedi the learned senior counsel for the



petitioner submits that the plaintiff opposite party filed two eviction suits. The eviction suit no. 29 of 2006 was against Manish Kumar Banka who was the tenant in one of the shops. The eviction suit no. 30 of 2006 was filed against the petitioner. He has further been pointed out that in that eviction suit no. 29 of 2006, on the objection by the tenant defendant, the plaint was directed to be returned upon the finding that the issue involved determination of the complicated question of title between the parties and the same was not within the jurisdiction of the court of small causes. Mr. Dwivedi then submits that as both the suits proceeded on the common ground filed by the same land lord and therefore, the eviction suit no. 30 of 2006 ought not to have been entertained and the plaint ought to have been directed to be returned. It has been argued that the said fact is sufficient for review of the judgment and order passed in the Civil Revision No. 986 of 2009.

While supporting the prayer for condonation of delay it has been submitted by the learned senior counsel that the petitioners after judgment and order passed in Civil Revision No. 986 of 2009 went to the Apex Court for filing the Special Leave Petition but the learned counsel there advised the petitioner to file the review petition. It has therefore been submitted that the

delay which has occurred in filing this revision application is not deliberate as the petitioner was bonafidely pursuing of the redressal before a competent court.

Mr. Sinha, learned senior counsel appearing for the opposite party, has opposed the prayer for review as well as for condonation of delay. It has been submitted by Mr. Sinha that though the petitioner filed the petition before the executing court that he was going to the Apex Court for filing Special Leave Petition but in fact he never went there. Although the opposite party had filed caveat before the Apex Court in that view, but the same has went in vain.

During the course of his submissions Mr. Dwivedi has accepted that the aforesaid fact of return of the plaint in eviction suit no. 29 of 2006 was never brought to the notice of the court. It has also been accepted that there is no averment on behalf of the petitioner even in present review application to the effect that the petitioner has no knowledge of the said order when the revision application was filed. In the petition for condonation of delay also the name of the counsel to whom the petitioner had approached for filing the Special Leave petition has not been disclosed and the delay appears to have been explained in casual manner.

After considering the aforesaid facts and circumstances this court is not satisfied that sufficient cause for condonation of delay of more than three months is established. . The prayer for condo nation of delay is accordingly rejected and consequently the review application is also dismissed.

(V. Nath, J)

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