

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.222 of 2014**

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1. Rohin Thakur Son of Late Ramchu Thakur
  2. Anil Thakur Son of Late Somar Thakur @ Sobharan Thakur
  3. Ashok Thakur Son of Late Narayan Thakur
  4. Khiro Devi Wife of Late Narayan Thakur 1 to 4 Resident of Village-Meharpur, P.O.-Ghutiya, P.S.-Banka, District-Banka.
  5. Lalita Devi Daughter of Late Narayan Thakur, Wife of Sri Prabhu Dayal Thakur Resident of Village-Baksara, P.O.-Baksara, P.S.-Paraiya Ghat, District-Godda.
  6. Sunita Devi Daughter of Late Narayan Thakur, Wife of Tuntun Thakur Resident of Village-Dhamsai, P.O.-Chapri, P.S.-Pathargawan, District-Godda.

.... .... Appellant/s

Versus

1. Pramod Thakur Son of Late Nand Kishore Thakur Resident of Village-Meharpur, P.O.-Ghutiya, P.S.-Banka, District-Banka.
2. Radhiya Devi Daughter of Late Nand Kishore Thakur, Wife of Sri Kameshwar Thakur Resident of Village-Nonihari, P.O.-Banka, P.S.-Banka, District-Banka.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Umesh Kumar Verma

For the Respondent/s : Mr. B. P. Pandey, Sr. Advocate

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL ORDER**

7      18-02-2015                      Heard the learned Counsel for the appellants and the learned Senior Counsel appearing for the respondents.

The Interlocutory Application (I.A. No. 8186 of 2014) has been filed for condonation of delay of 9 years 11 months and 10 days (3635 days) in filing this appeal. The other two Interlocutory Applications are I.A. No. 8184 of 2014 filed under Chapter VI Rule 4 of the Patna High Court Rules and I.A. No. 8185 of 2014 filed under Chapter VI Rule 3 of the Patna High Court Rules.

The limitation petition (I.A. No. 8186 of 2014), with the consent of the parties, has been taken up for consideration prior to

the other two Interlocutory Applications. The respondents have filed counter affidavit to the limitation petition.

Learned Counsel for the appellants has submitted that the suit for declaration of title and other consequential reliefs over the suit land was filed by the three plaintiffs out of whom NarayanThakur and his brother Rohin Thakur were plaintiff nos. 1 and 2, and Anil Thakur was plaintiff no. 3 who was the agnate of plaintiff nos. 1 and 2. It has been further submitted that after decree of the said suit in part with regard to 6 ½ decimals of land, an appeal was preferred by the defendants, which was allowed. Referring to the averments made in the limitation petition, learned Counsel has submitted that Narayan Thakur, who was the pairvikar of the case, obtained two sets of judgment and decree and handed over one set to plaintiff no. 3 Anil Thakur, and himself came to Patna for filing the appeal before this Court. It has been further submitted that the appellants were all along under the impression that Narayan Thakur had filed the appeal and was pursuing the same. It has been further submitted that after the death of Narayan Thakur on 23.3.2013 the appellants came to know that no appeal was filed before this Court by Narayan Thakur and then after hectic search and efforts the present appeal has been filed. It has been propounded by the learned Counsel that in this backdrop there was no deliberate delay or laches on the part of the appellants in filing this appeal belatedly and as there are substantial questions of law involved in this appeal, the period of limitation should be condoned.

Mr. Pandey, learned Senior Counsel appearing on behalf of



the contesting respondents, however, has submitted that the appellants have entirely failed to submit convincing explanation for non filing of the appeal right from 24.6.2004 when the judgment and decree was passed by the appellate court below till the filing of the present appeal on 1.9.2014. It has also been argued that a bald statement that the appellants carried the impression that Narayan Thakur had filed the appeal as he used to go to Patna, is by itself not sufficient to allow the appellant to submit that the said explanation is bona fide. It has further been argued by the learned Senior Counsel that admittedly two sets of judgment and decree had been obtained, though it was not normal course when all the appellants had together filed and pursued the suit, but even accepting the said position, the appellant no. 2 Anil Thakur to whom other set of judgment and decree was handed over is required to explain his inability to file the appeal himself or for not obtaining any information from Narayan Thakur for long nine years, which is again against the normal conduct of a party. Learned Counsel has, therefore, submitted that the explanation furnished by the appellants for condoning the delay of more than 9 years is not bonafide and not fit to be accepted.

After careful consideration of the matter and the rival submissions on behalf of the parties it is limpid that there were altogether three plaintiffs, who sought relief in the suit jointly in their favour. After the decree in the suit, the appeal was filed by the defendants, which was also contested jointly by the three plaintiffs as respondents. The case of the appellants that thereafter the two sets of judgment and decree of the trial court was obtained is not in



consonance with the aforesaid stand, and on specific query by the Court, the learned counsel for the appellants has submitted that it was only for the satisfaction of the appellant no. 2 Anil Thakur that another set of judgment and decree was obtained but the appeal was to be filed by Narayan Thakur who also obtained the signature on Vakalatnama for filing the appeal. Conspicuously however there is no statement by the present appellants that they at any point of time made enquiries from Narayan Thakur who survived till 23.3.2013 regarding the status of appeal. This aspect assumes more importance when the present appellant no. 2 was particularly conscious of his rights and had obtained a separate set of judgment and decree of the court below. The bald and casual explanation that the present appellants although carried the impression that the appeal had been filed by Narayan Thakur does not appear to be a cogent explanation for delay of more than 9 years. In cases of inordinate delay, the conduct and behaviour of the party praying for condonation also become relevant consideration in view of the doctrine of prejudice. The dictum in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy, 2014 (1) PLJR (SC) 290, is apt to be noticed here. Their Lordships have observed as follows:-

“15. ....

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(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the

latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

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16. ....

- a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

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- (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

Testing the facts and submissions on behalf of the appellants on the anvil of the principles laid down in Esha Bhattarcharjee (supra), this Court holds that the appellants have failed to establish sufficient cause for condonation of delay in filing this appeal.

In result, the limitation petition (I.A. No. 8186 of 2014) is

dismissed. Consequently the Second Appeal is also dismissed as  
barred by limitation.

(V. Nath, J.)

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