

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.40 of 2015

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1. Babu Ram Nonia @ Babuwa Nonia son of Late Mohan Nonia
 2. Chotu Nonia son of Late Govind Nonia
 3. Karu Nonia son of Late Ram Sevak Nonia
 4. Nandlal Nonia son of Late Jageshwar Nonia All petitioner no.1 to 4 are resident of village- Gare Tola, Chiraiya Tar, Police Station- Mufassil, Anchal- Manpur, District- Gaya.

.... Petitioner/s

Versus

1. Sabeya Devi wife and widow of Late Darogi Nonia
2. Rubi Devi
3. Pinki Kumari
4. Saraswati Devi All opposite parties No. 2 to 4 are minor daughters of Late Darogi Nonia and these minor opposite parties sues this revision application through their next friend and guardian and mother namely Sabeya Devi and all opposite parties no. 1 to 4 are resident of village- Gare tola, Chiraiya Tar, Police Station- Mufassil, Anchal- Manpur, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

2 07-07-2015 Heard the learned counsel for the petitioners. With the consent of the learned counsel for the petitioners, this application has been heard on merits as well and is being disposed of at this stage itself.

Calling in question the impugned order dated 06.02.2015 whereby the appellate court below has condoned the

delay in filing the appeal, the present revision application has been filed by the petitioners.

It has been submitted on behalf of the petitioners that the appellants-opposite parties have failed to establish sufficient cause for condonation of delay in filing the appeal but the learned court below has not considered the said fact and erroneously allowed the prayer for condonation of delay. It has been pointed out by the learned counsel for the petitioners that earlier the suit was filed by the husband of the appellant-1 and the father of opposite party nos. 2 to 4 as plaintiffs. In the said suit a withdrawal petition was filed by the original plaintiff on 11.12.2002. It has been further submitted that the original plaintiff died before any order could have been passed in the suit on the said petition. The learned counsel for the petitioners has further pointed out that the appellant-opposite parties who were substituted in the suit as plaintiffs filed a petition on 12.08.2009 praying for withdrawal of the suit but after the filing of the said withdrawal application, they did not appear in the suit and ultimately the judgment and decree was passed dismissing the suit. In this backdrop of facts, it has been submitted that no sufficient cause has been made out by the appellants before the appellate court below for condonation of delay in filing the appeal.



After careful consideration of the facts and submission, it is evident that the withdrawal application was filed by the present opposite parties in the suit where they had been substituted as plaintiffs. It has not been disputed that they did not appear in the suit after filing of the withdrawal application. However, the suit proceeded in view of the counterclaim filed by the defendants and ultimately the suit was dismissed. The learned court below, after considering in detail the facts and circumstances, has allowed the prayer for condonation of delay after holding that the appellants have succeeded in establishing the sufficient cause. The reliance on behalf of the petitioners have been placed on the judgment of the Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee 2014 (1) PLJR SC 290** in support of the submission that the prayer for condonation of delay should not have been allowed. However, the principles laid down in this regard does not support the case of the petitioners as it has also been held by their lordships that the deliberate causation of delay and the wrongful gain by the party by causing the delay are also the factors to be considered before exercising the power under Section 5 of the Limitation Act. In the present case on behalf of the petitioners it could not be shown that the appellants-opposite parties have gained by causing the delay in

filing the appeal or for that reason not appearing in the suit after filing of the withdrawal application. To the contrary, it has been their case that after they filed the withdrawal application, their counsel had advised that the suit had now come to an end and under this impression they bonafidely did not appear in the suit thereafter.

After taking overall view of the matter, this Court is not persuaded that the appellate court below has committed error of jurisdiction in passing the impugned order.

The revision application is accordingly, dismissed.

The interlocutory application (I.A. No. 5081 of 2015) is also dismissed.

(V. Nath, J)

Devendra/-

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