

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1577 of 2014
In
Civil Writ Jurisdiction Case No. 15784 of 2006

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1. Surajdeo Lal son of Late Dhari Lal, resident of village -
Motha, Police Station - Karakat, District - Rohtas.

.... Appellant

Versus

1. The State of Bihar.
2. The Secretary, Water Resources Department,
Government of Bihar, Patna.
3. The Under Secretary, Water Resources Department,
Government of Bihar, Patna.
4. The Chief Engineer, Water Resources, Bhagalpur.
5. The Executive Engineer Irrigation Division Katahara Tand
Camp, Batia, District - Jamui

.... Respondents

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Appearance :

For the Appellant/s : Mr. Madan Prasad Jha, Advocate.

For the Respondent/s : Mr. Dhurjati Kr Prasad, GP-7
Mr. Subodh Kumar Mishra, AC to G.P.7

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH

CAV ORDER

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

5 19-01-2015 This appeal is preferred against the order,

dated 15.7.2014, passed in C.W.J.C. No.15784 of 2006,

whereby a learned single Judge of this Court has

dismissed the writ application filed by the appellant herein

seeking directions to be issued to the respondents to

make payment of salary for the period from 18.9.1990 to



24.1.1993. For dismissing the writ application, the learned single Judge took the view that the writ petitioner's claim was essentially for realization of money, which is apparently barred by limitation inasmuch as the writ application was filed, as noted by the learned single Judge, after inordinate delay of 13 years with no plausible explanation having been offered for the delay. In the appeal too, the writ petitioner-appellant has not been able to provide any plausible, convincing or reasonable explanation for the delay.

2. Considering the fact that the appellant has assigned no convincing or plausible reason for filing the writ petition after inordinate delay of as many as 13 years, we do not find any reason to take a view contrary to what has been taken by the learned single Judge.

3. It is rudimentary that the Supreme Court has observed that relief can be refused by Court under Article 226 of the Constitution of India if there is undue delay and laches in filing writ petition. (See **C. Jacob V. Director of Geology and Mining and Another (A.I.R. 2009 S.C. 264)**).

4. Considering the fact, if we may reiterate, that the appellant has assigned no convincing or plausible reason for filing the writ petition after inordinate delay of



as many as 13 years, a suit for recovery of money has to be filed within three years from the date, when the cause of action arises. The extra-ordinary jurisdiction, under Article 226 of the Constitution of India, has to be exercised to enforce the law and not to defeat the same. In other words, the power, under Article 226 of the Constitution of India, has to be exercised to effectuate the rule of the law and not to abrogate or defeat. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override the law. The power, under Article 226 of the Constitution of India, is conceived to serve the ends of law and not to transgress them. (See **Mafatlal Industries Ltd. v. Union of India**, reported in **(1997) 5 SCC 536**).

5. Dealing with the question as to whether a time barred debt can be recovered by taking resort to Article 226 of the Constitution of India, the Constitution Bench, in **State of Madhya Pradesh and Another v. Bhailal Bhai**, reported in **(1964) 6 SCR 261**, observed that the remedy, which Article 226 of the Constitution of India provides, is not aimed at superseding completely the modes of obtaining relief by an action in a civil court or to deny the defence legitimately open in such actions. Pointed out the Constitution Bench in **Bhailal Bhai**



(supra) that the power to give relief under Article 226 of the Constitution of India is a discretionary power and this is, particularly, true in the case of issue of a writ of mandamus and while deciding as to whether the court shall exercise its discretion to issue the writ, one of the factors, which the court must take into account, is the delay made by the aggrieved party in seeking the remedy under Article 226 of the Constitution of India and what explanation, if any, has been offered for such a delay. Further points out, the Constitution Bench, in **Bhailal Bhai** (supra), that the maximum period fixed by the legislature as the period of limitation for obtaining relief from the civil court is a matter of State's policy and may be, ordinarily, taken to be reasonable standard by which the delay in seeking the remedy under Article 226 of the Constitution of India can be measured. In fact, the court may consider, in the light of **Bhailal Bhai** (supra), the delay as unreasonable even if the delay is for a period less than the period of limitation prescribed for a civil action; but where the delay is of a period, which is more than the prescribed period of limitation, it would almost always be proper for the court to hold that such delay is unreasonable. The Constitution Bench, in **Bhailal Bhai** (supra), concluded thus:



"It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr. Andley seems to argue, the mistake was discovered much later, this

would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of the opinion the orders for refund made by the High Court in these seven cases cannot be sustained."

6. In the light of the law laid down in **Bhailal Bhai** (supra), we are required to consider the present appeal. There is no dispute before us that a period of limitation prescribed for recovery of dues is three years from the date, when the payment becomes due.

7. In the case at hand, therefore, the onus was on the writ petitioner to show, when his dues were, otherwise, time barred, as to why he had not approached this Court seeking a *writ* in the nature of *mandamus* before the dues became time barred. For this purpose, material facts ought to have been stated by the writ petitioner, in the writ petition, so as to enable the High Court to decide if the writ petitioner had good reasons for not approaching the Court before the limitation period expired. This, however, does not mean, we must hasten to add, that the Government is debarred from making payment of its time barred debts, for, there is no provision, under the law, prohibiting the State from

clearing its dues even after the dues become time barred.

8. So far as the case at hand is concerned, the fact remains that the claim for recovery of salary has been made long after 13 years and this delay having not been explained, the writ petition was rightly rejected as the writ petition, which has raised claim, is stale.

9. In the result and for the reasons pointed out above, this appeal fails and shall accordingly stand dismissed.

(I. A. Ansari, J.)

S. P. Singh, J.: I agree.

(Samarendra Pratap Singh, J.)

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