

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1701 of 2014

In

Civil Writ Jurisdiction Case No. 2874 of 2014

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JAI BHARAT SINHA @ JAI BHARAT SINGH, SON OF LATE
PURAN SINGH RESIDENT OF VILLAGE SENDUARI, P.O.-
SENDUARI, P.S. – SADAR HAJIPUR, DISTRICT VAISHALI

.... APPELLANT

VERSUS

1. THE STATE OF BIHAR THROUGH THE CHIEF
SECRETARY, BIHAR GOVERNMENT

2. THE DISTRICT MAGISTRATE –CUM- DISTRICT ELECTION
OFFICER, VAISHALI

3. THE COMPANY COMMANDER, HOME GUARD, BIHAR

4. The District Commandant, Home Guard, Vaishali

.... RESPONDENTS

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Appearance :

For the Appellant/s : Mr. Binod Pd. Singh, Advocate.
Mr. Bharat Bhushan Singh, Advocate.

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL ORDER

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

2 07-01-2015 I. A. No. 9598 of 2014 has been filed by the

appellant herein, under Section 5 of the Limitation Act,

seeking condonation of delay of 30 days in preferring the

present letters patent appeal against the order, dated

07.07.2014, passed by a learned single Judge of this

Court in CWJC No. 2874 of 2014.

Heard learned Counsel for the appellant.

Having considered the reasons assigned in the
present limitation petition and having heard the learned

counsel for the appellant, this Court is satisfied that the appellant herein was prevented by sufficient causes from preferring the appeal within time.

In view of the above, the delay of 30 days, in preferring the appeal, is hereby condoned.

I. A. No. 9598 of 2014 shall stand disposed of accordingly.

The appellant herein had been engaged, from time to time, on election duty, as a Constable; but instead of paying his due wages of Rs. 5,200/-, he had been paid wages of a sum of Rs. 3,380/-. The appellant, therefore, instituted Money Suit No. 01 of 2006, which was decreed, on 27.03.2012, by the learned Munsif 1st, Vaishali, at Hajipur, directing the respondents herein to pay to the plaintiff (i.e., the appellant herein) his full wages with interest at the rate of 6 *per cent* per annum on the wrongly withheld amount. The respondents herein satisfied the decree aforementioned by making to the appellant payment of the decretal amount.

The appellant, thereafter, filed a writ petition, bearing CWJC No. 2874 of 2014, seeking, *inter alia*, direction to be issued to the respondents to pay him Rs. 50,000/-, as compensation, on the ground that he was mentally harassed by the respondents herein.

By order, dated 08.07.2014, a learned single Judge of this Court has dismissed the writ petition on the ground that since the decretal amount has already been paid to the appellant, no further direction for grant of any other relief, such as compensation, can be directed to be paid to the writ petitioner (i.e., appellant).

Aggrieved by the order, dated 08.07.2014, dismissing his writ petition, the writ petitioner is, in appeal, before us.

We have heard learned Counsel for the appellant.

In terms of sub-Rule (1) of Rule 2 of Order II of the Civil Procedure Code, every suit shall include the whole of the claim, which a plaintiff is entitled to make in respect of the cause of action and though he may relinquish any portion of his claim, he cannot afterwards sue in respect of the portion so omitted or relinquished.

Close on the heels of sub-Rule (1) of Rule 2 of Order II, sub-Rule (2) read with sub-Rule (3) of Rule 2 of Order II lay down that a person, entitled to more than one relief in respect of the same cause of action, may sue for all or any of such reliefs; but if he omits to sue for all such reliefs, he shall not, afterwards, sue for any relief so omitted except if he omits to claim a relief with the leave

of the Court.

From a reading of Rule 2 of Order II, as a whole, what becomes clear is that a plaintiff shall include the whole of his claim, which he is entitled to in respect of a cause of action, but he may relinquish, or omit to sue, any portion of his claim and if he so omits or relinquishes to sue for any claim, he shall not be allowed to sue, afterwards, in respect of the portion of the claim so omitted or relinquished and when a person is entitled to more than one relief in respect of the same cause of action, he may sue for all or any of such reliefs; but if he omits to sue for all such reliefs, except with the leave of the Court, he shall not, afterwards, sue for any relief so omitted.

In the case at hand, it was open to the appellant to seek, in Money Suit No. 01 of 2006, a decree for payment of compensation, but no such claim was made and no leave, in this regard, was obtained from the learned decretal Court. Thus, when the relief could have been claimed in the suit itself by the appellant, but was not sought for by him, it necessarily follows that the appellant herein is debarred from bringing any suit. When the appellant is debarred from bringing a fresh suit claiming compensation for the harassment that he alleges

to have suffered, he could not have been allowed to agitate his grievance, with regard to compensation, by way of a writ petition made under Article 226 of the Constitution of India.

The learned single Judge was, therefore, in our considered view, wholly correct in dismissing the writ petition.

For the reasons discussed above, we do not find any merit in this appeal. The appeal is accordingly dismissed.

There shall be no order as to costs.

(L. Narasimha Reddy, CJ.)

(I. A. Ansari, J.)

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