

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1632 of 2014

IN

Civil Writ Jurisdiction Case No. 12188 of 2008

- =====
1. The Bihar State Housing Board through its Managing Director, 6, Sardar Patel Marg, Patna
 2. The Estate Manager-cum-Additional Secretary, the Bihar State Housing Board, 6, Sardar Paterl Marg, Patna.
 3. The Executive Engineer, the Bihar State Housing Board, 6, Sardar Paterl Marg, Patna.
 4. The Account Officer, the Bihar State Housing Board, 6, Sardar Paterl Marg, Patna.

.... Appellants

Versus

Anand Murthy Mallick, S/O late Krishna Deo Mallick R/O village - Anta, P.O- Narayan Dohat, P.S. Baheri, District- Dharbhanga (Bihar).

.... Respondent

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Appearance :

For the Appellants : Mr. Anshuman Singh, Advocate

For the Respondent: Mr. A.K. Sinha, Sr. Advocate

Mr. S.K. Singh,

Mr. Anupa Nand Jha, Advocates

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-03-2015

I.A. No.9233 of 2014

This interlocutory application under Section 5 of the Limitation Act is filed with a prayer to condone the delay of 262 days in preferring the Letters Patent Appeal.

2. In view of the reasons assigned in the application, the delay is condoned. I.A. No.9233 of 2014 is, accordingly, allowed.

L.P.A. No.1632 of 2014

3. The present appeal has been filed against the order

dated 02.09.2013 passed in CWJC No.12188 of 2008, allowing the writ petition of the petitioner-respondent, inter alia, requiring the Managing Director of the Housing Board to pass fresh orders with regard to refund of the money deposited by the petitioner-respondent together with interest thereon.

4. It transpires that pursuant to the aforesaid direction, an order contained in Memo No.1180 dated 26.02.2008 has since been passed by the Chairman-cum- Managing Director of the Bihar State Housing Board, holding that the respondent is entitled to refund of the deposit together with 5% interest on the earnest money. Accordingly, the entire amount deposited being Rs.1,70,559/- has since been refunded together with simple interest at the rate of 5% on the earnest money in all aggregating to Rs.1,84,497/- and sent vide Cheque No.000605 dated 26.05.2008 to the petitioner-respondent. Such interest has been computed on the basis of Regulation 45 of the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 which provides as follows:-

“Simple interest at the rate of 5 per cent will be payable on the amount of earnest money deposited by the applicants, after the date of enforcement of this Regulation. No interest will be payable on deposits made hereinbefore.”

It is submitted that the money having been deposited by the petitioner-respondent on 28.09.1989 and 20.10.2001, the provision

of Regulation 45 aforesaid was applicable in respect of the earnest money.

5. Learned counsel for the appellants is aggrieved only with that part of the order of the learned Single Judge wherein reference has been made to a decision of this Court reported in 2010 (3) PLJR 241 (Shakuntala Devi and others Vs. Managing Director, Bihar State Housing Board & others) directing refund of the amount along with interest at the rate of 10% interest compounded annually from the dates of deposits till the date of payment.

6. A counter affidavit has been filed on behalf of the respondent reiterating that he was entitled to compound interest at the rate of 18% on the deposit together with compensation.

7. We find that while Regulation 45 provides for simple interest at the rate of 5% on the earnest money but does not make any specific provision with regard to interest payable on deposits made after enforcement of the Regulations. Further, we do not find any legal basis for the direction issued in the writ petition for payment of compound interest, muchless at 10%.

8. Having regard to the rival submissions of the parties, we are of the view that the ends of justice will be met if the appellants are directed to calculate simple interest at the rate 9% on the amount of money deposited by the petitioner-respondent other

than the earnest money and make payment of the same to the petitioner-respondent within a period of eight weeks from today.

9. The LPA is partly allowed to the extent indicated above. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Vikash Jain, J)

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