

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1559 of 2016**

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Bhudeolal

.... Petitioner/s

Versus

The State of Bihar & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravindra Kumar Sinha

For the Respondent/s : Mr. Subhash Chandra Yadav-Gp15

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 23-12-2016 Heard the learned counsel for the petitioner and the

learned counsel for the respondents.

Perused the impugned order dated 02.09.2016 passed
by District Judge, Gaya in Title Appeal No.63 of 2009 whereby
the learned court below allowed the limitation application filed by
the appellant-respondent praying for condoning the delay.

The learned counsel for the petitioner submitted that
there is delay of about 7 years in filing the appeal and in fact, the
respondent had got knowledge about the pendency of the suit as
summons were validly served on them. Even after receiving the
summons, they did not appear nor they contested the suit,
therefore, the ex parte judgment and decree was passed. Against
the said ex parte judgment and decree dated 15.12.2002, appeal
was filed after 7 years and wrongly it was submitted before the
appellate court that the respondents herein had got no knowledge
about the ex parte judgment and decree. The learned counsel



submitted that in fact, after the ex parte judgment and decree, the petitioner filed mutation application and, therefore, the respondents had got knowledge about the passing of ex parte judgment and decree but they did not file the appeal within the time. Without considering this aspect of the matter, the Court below by the impugned order has condoned the delay of about 7 years.

On the other hand, the learned counsel appearing on behalf of the State-respondents submitted that the judgment and decree is ex parte and it is admitted. It is the case of the respondents that they had no knowledge about the ex parte judgment and decree. When they came to know, they filed the appeal after obtaining sanction from the authority. In such circumstances, considering this aspect of the matter, the appellate court has rightly condoned the delay.

The Hon'ble Supreme Court in the case of **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors., 2014(1) PLJR 290(SC)** has held that “there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. Substantial justice being paramount and pivotal the technical considerations should



not be given undue and uncalled for emphasis.” The Supreme Court also held that “it is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.” At clause (xiii) of paragraph 15 of the said decision, the Supreme Court has held that “the State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

The Court below considering the facts have given the latitude and had held that the judgment and decree is ex parte and that the State had no knowledge about the ex parte judgment and decree and when they came to know about the same this appeal has been filed after obtaining sanction from the D.M. In such view of the matter, the question appears to be disputed question which has been dealt with by the Court below.

Therefore, in exercise of supervisory jurisdiction, this Court cannot substitute its own conclusion for the purpose of supervising the impugned order. Thus, I find no reason to interfere with the impugned order and accordingly, this civil miscellaneous application is dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)