

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.94 of 2015

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1. The State of Bihar, through the Collector, Nawadah.
 2. The Superintending Engineer, Fulwaria Dam Rajauli, Police Station - Rajauli, District - Nawada.
 3. Anchal Adhikari, Anchal Officer, Nawada.

.... Appellants

Versus

Balgovind Prasad Son of Late Punit sawa, resident of village - Rajauli, Police Station - Rajauli, District - Nawada.

.... Respondents

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Appearance :

For the Appellant/s : Mr. H.S.Ray, A.C. to P.A.G.I
For the Respondent/s : Mr. Mr.Anil Kumar Jha, Sr.Adv.
Mr.Gopal Bouva, Adv.
Mr. Sunil Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-12-2016

Heard the learned counsel for the parties in the interlocutory application (I.A.No.5618/2015) filed on behalf of the appellants for condonation of delay in filing this appeal.

According to the office report, there is delay of 1 year 5 months and 24 days.

After considering the submissions and from the materials on record, it transpires that a suit was filed by the respondents in the year 1985 for declaration of title over the suit land. In the said suit, the present appellants were impleaded as defendants and they filed their written statement. Later on they left the contest in the suit and ultimately the suit was decreed ex parte on 16.12.1987,



The defendants (appellants at present) filed an application under Order 9 Rule 13 C.P.C. for setting aside the said ex parte decree but the same was also dismissed for default. The defendants, thereafter, filed petition for restoration of the miscellaneous case initiated on the basis of petition under Order 9 Rule 13 C.P.C. but by order dated 15.07.1993 the learned court below has turned down the prayer for restoration, as prayed.

It further transpires from the record that the present appellants after dismissal of the prayer for restoration in the year 1993, preferred Title Appeal No.25/2012 against the ex parte decree dated 16.12.1987 passed in T.S.No.05/1985. The appellate court below has disposed of the said appeal by the judgment and order dated 21.08.2013. It further appears that a petition for obtaining copy of the decree was filed but the same was also rejected by the appellate court below on 17.06.2015 holding that no decree could be drawn on the basis of the order dated 21.08.2013. Nonetheless, the present appellants have preferred this appeal on 15.07.2015 and the office has pointed out, as abovementioned, the delay of 1 year 5 months and 24 days in filing this appeal.

In the interlocutory application (I.A.No. 5618/2015) filed for condonation of delay, it has been averred that the present appellants remained ignorant about the disposal/dismissal of



the Title Appeal No.25/2012, as no such information was given by the government pleader to the appellants. It has been further averred that subsequently the appellants became aware of the disposal/dismissal of the appeal and then they obtained the certified copy of the judgment dated 18.03.2015 and thereafter the present appeal has been filed. From the perusal of the averments made in the limitation petition, it is clear that the averments have been made in a casual manner without specifying the details which would have cogently explained the delay in filing this appeal.

Reply to the aforesaid interlocutory application has been filed on behalf of the plaintiff-respondent where in paragraph-4, it has been categorically stated that the government pleader by the letter dated 06.09.2013 had informed the respondent-District Magistrate-cum-Collector regarding the disposal of the Title Appeal No.25/2012. There is no rejoinder controverting the aforesaid statement made on behalf of the plaintiff-respondent.

The aforesaid facts and circumstances clearly indicate that the appellants have not come with clean hands before this Hon'ble Court and they have made wrong statement in paragraph-4 of the limitation petition that they remained ignorant about the disposal/dismissal of the title appeal, as no such information was given by the government pleader to the appellants.



The learned counsel appearing for the appellants, however, has submitted and relied upon several decisions to persuade this Court to take the view that an appeal where substantial questions of law arise for consideration should not be dismissed on the technical ground of limitation. The principles, while considering the prayer for condonation of delay, have been well laid by the apex court in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy*, (2013) 12 SCC 647 and their lordships have clearly drawn a distinction between the inordinate delay and the delay of few days. Their lordships have also observed that the casual approach in the matter of limitation should not be countenanced. Even in the decision in the case of *Brijesh Kumar Vs. State of Haryana*, (2014) 11 SCC 351 their lordships have reiterated the same principle.

From the facts and circumstances as mentioned above, it is demonstrably clear that the ex parte decree had been passed against the appellants in the year 1987 itself but after dismissal of the miscellaneous case filed in Order 9 Rule 13 C.P.C. for setting aside the said ex parte decree, and dismissal of the prayer for restoration of the miscellaneous case in 1993 the appellants did not choose to take any step further and it was only in the year 2012 that the appeal was filed against the ex parte decree itself. These background facts do not enthruse this Court to take liberal approach in this matter while



considering the prayer for condonation of delay on behalf of the appellants. The Limitation Act is a statute of repose and the provisions of Section 5 cannot come to the rescue of a litigant who had chosen to sleep over the matter knowing fully well that a decree had been passed against him long back. This Court finds that the appellants have failed to establish sufficient cause for condonation of delay.

At this juncture, the learned counsel for the appellants has prayed to convert this appeal into an application under Article 227 of the Constitution of India. In view of the fact that this appeal itself is barred by limitation, this Court declines the grant of such prayer.

The interlocutory application, praying for condonation of delay, is accordingly, dismissed.

Consequently, this appeal is also dismissed as barred by limitation.

It is, however, observed that this Court has not expressed any opinion on the merit of the claims of rival parties and the appellants may seek redressal of their grievances, if permissible, in accordance with law.

(V. Nath, J)

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