

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1425 of 2015

In

SA 364 of 1989

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1. Ayodhya Singh Son of Late Khakhanu Singh,
 2. Most. Bindu Devi, W/o Late Guput Singh,
 3. Bikash Singh, Son of Late Guput Singh,
 4. Anil Kumar Singh, Son of Late Rajendra Singh,
 5. Sunil Kumar, Son of Late Rajendra Singh,
 6. Sushil Kumar Singh, Son of Late Rajendra Singh,
 7. Arbnd Kumar, Son of Late Rajendra Singh, All are resident of village - Jehanabad, Police Station - Kudra, District - Kaimur.

.... Petitioners

Versus

1. Ram Bachan Singh Son of Late Sukhiya Devi,
2. Guddu Singh, Son of Ram Bachan Singh, null
3. Mostt. Shakuntala devi, W/o Late Shankar Singh,
4. Dhrit Kumar Yadav, Son of Late Shankar Singh,
5. Mantu Yadav, Son of Late Shankar Singh,
6. Lalan Singh, Son of Late Most. Sukhiya Devi,
7. Bhola Yadav, Son of Lalan Singh, All resident of village -Jehanabad, Police Station -Kudra, District - Kaimur (Bhabhua).

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

6 18-01-2016 I.A. No. 197/2016 has been filed on behalf of the petitioners to condone the delay in filing instant petition covering the period of more than 11 years and the same, as is evident from the averments made therein, has not been properly explained.

The learned counsel for the petitioners relied upon M.K.

Prasad Vs. P. Arumugam, reported in 2001 (4) PLJR Page 137

(SC) and submitted that the period should not be taken as a ground to reject the prayer because of the fact that substantial justice has to be done.

After going through the aforesaid decision, it is apparent that the same happens to be in the pretext of an ex parte judgment, wherein there was no valid execution report. So far present dispute is concerned, it happens to be with regard to dismissal of second appeal which was dismissed in default. In order to substantiate the same, it has been submitted that learned counsel engaged by the appellant had not put his presence on the specific date and further, as the sole appellant died as well as being ignorant of the aforesaid event, petitioners came to know in the year 2014, whereupon rushed to obtain the relevant copies and then filed the instant petition.

Though, Limitation prescribe the limit whereunder parties are forbidden to seek remedy, however it did not extinguish the right. Furthermore, grounds have been enumerated whereupon, delay if any in asking for a relief is to be condoned. However, those grounds must be legal, cogent, bonafide appreciable within the meaning of sufficient cause. Side by side, he is also expected to flash that there was no inaction or slackness on his part and that happens to be the matter of consideration while interpreting the

sufficient cause as incorporated under Para-9 of M.K. Prasad (Supra) decision. For better appreciation, Para-9 is quoted below:-

.....9. Again in **The State of West Bengal Vs. The Administrator, Howrah Municipality & Ors.** [(1972) 1 SCC 366] and **G. Ramegowda, Major & Ors. Vs. Special Land Acquisition Officer, Bangalore** [(1988) 2 SCC 142] this Court observed that the expression “sufficient cause” in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bonafide is not imputable to the party seeking condonation of delay. Law of Limitation has been enacted to serve the interests of justice and not to defeat it. Again in **N. Balakrishnan Vs. M. Krishnamurthy** [(1988) 7 SCC 123] this court held that acceptability of explanation for the delay is the sole criterion and length of delay is not relevant. In the absence of anything showing *malafide* or deliberate delay as a dilatory tactics, the court should normally condone the delay. However, in such a case the court should also keep in mind the constant litigation expenses incurred or to be incurred by the opposite party and should compensate him accordingly. In that context the court observed:

“It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of



acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

therefore, I.A. No. 197/2016 is not at all found meeting with the yard scale laid down by the Apex Court as referred above. As found, the grounds whereupon prayer for condonation has been made, did not explain the delay with proper explanation and on account thereof, I.A. No. 197/2016 is rejected. Consequent thereupon M.J.C. No. 1425/2015 is found hopelessly time barred which, in light of rejection of I.A. No. 197/2016 is found duly eclipsed and is accordingly rejected.

(Aditya Kumar Trivedi, J.)

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