

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15513 of 2015**

=====

M/s Surya Nest Build Ltd. & Anr

.... .... Petitioner/s

Versus

M/s S. R. M. Builders & Ors

.... .... Respondent/s

=====

**Appearance :**

For the Petitioner/s : Mr. Jitendra Kishore Verma, Adv.

Mr. Pratik Kumar Sinha, Adv.

For the Respondent/s : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR  
SAHOO**

**ORAL ORDER**

3      02-02-2016    1.            Heard the learned counsel, Mr. Jitendra Kishore Verma,  
  
for the petitioner and the learned counsel, Mr. Aditya Narain  
  
Singh No.I, for the respondent.

2.            This application under Article 227 of the Constitution of  
  
India has been filed by the defendant Ist set petitioners for setting  
  
aside the order dated 24.08.2015 passed by learned District Judge,  
  
Patna in Misc. Appeal No.36 of 2015 whereby the order dated  
  
5.6.2015 passed in Title suit No.148 of 2015 by Sub Judge IVth  
  
Patna has been stayed and order for injunction in the form of  
  
status quo has been passed.

3.            The learned counsel, Mr. Jitendra Kishore Verma for  
  
the petitioner raised a short ground that the trial Court on  
  
consideration of facts of the case recorded clear finding that the



buildings have already been substantially constructed and, therefore, the plaintiffs have got no prima facie case for the grant of injunction and rejected the injunction application filed by the plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure. Against the said order passed by the trial Court, the plaintiff filed Misc. Appeal before the lower appellate Court being Misc. Appeal No.36 of 2015 which was barred by law of limitation but the Court below without hearing the petitioners condoned the delay and operation of the order passed by the trial Court was stayed and then ex.-parte status quo order was passed without application of judicial mind. The learned counsel for the petitioner submitted that the lower appellate Court in fact has allowed the injunction application filed by the plaintiff which was rejected by the trial Court, at the admission stage of the Misc. Appeal. The learned counsel further submitted that the lower appellate Court has no such jurisdiction to grant ex.-parte injunction without application of judicial mind and which the plaintiff were entitled to be granted only if the appeal is allowed. The learned counsel further submitted that the lower appellate Court has exercised the jurisdiction in the manner not permitted by law and thereby occasioned failure of justice.

4. On the other hand, the learned counsel Mr. Aditya



Narain Singh No.1 for the respondent submitted that in fact instead of appearing before the Court below, the petitioners have directly filed this application under Article 227 of the Constitution of India. In fact it is mistake of the Court below which wrongly recorded that the buildings have been constructed completely. It is also wrong to say that the petitioners have invested huge amount and the Court below considering the grounds taken in the memo of appeal has passed the order of maintain status quo and the lower appellate Court has the jurisdiction to pass the order. Therefore, the same cannot be interfered with in supervisory jurisdiction under Article 227 of the Constitution of India.

**5.** Perused the order passed by the Court below dated 24.08.2015. From the order itself, it appears that the appeal was barred by law of limitation and limitation application was filed. It further appears that no notice was issued in limitation matter and it was condoned. It further appears that the lower appellate Court at the time of admission of the appeal itself stayed the operation of the impugned order passed by the trial Court whereby the injunction application was rejected and thereafter granted status quo order and thereby indirectly the lower appellate Court granted injunction in favour of the appellant. In my opinion, this order could have been passed by the lower appellate Court at the time of



hearing of the Misc. Appeal itself. In other words, it can very well be said that at the time of admission of the Misc. Appeal itself, the lower appellate Court has allowed the appeal after condoning the delay and granted injunction without hearing the respondent. Therefore, the lower appellate Court has exercised the jurisdiction in the manner not permitted by law. The lower appellate Court has not considered the ground of the trial Court whereby the injunction application was rejected recording a finding that the plaintiffs have got no prima facie case. It is settled principle of law that the ex.-parte injunction order cannot be granted without considering the facts and without considering as to whether if it is granted it will cause any prejudice to the other side or not. In the present case, admittedly, the injunction application was rejected by the Court below wherein there is finding that the plaintiff has no prima facie case. Against that appeal was filed. As stated above, in the impugned order, nothing is there to say that on what ground the plaintiffs appellants were entitled for at least interim injunction. Thus, this application under Article 227 is allowed. The impugned order so far it relates to the stay of operation of the trial Court order granting of status quo order regarding the activity done in the name of the appellant is hereby set aside.

**6.** Since the appeal had been admitted by the impugned

order after condoning the delay, it will be deemed that the limitation had been condoned and the appellant has got no objection in condonation of the delay.

7. Since both the parties who are the parties in the lower appellate Court are present before this Court, the Misc. Appeal itself is ready for hearing, therefore, considering the urgency of the nature of relief claimed in the Appeal as submitted by the learned counsel for the respondent, the Misc. Appeal itself may be disposed of expeditiously without unreasonable delay. The learned counsels for both the parties agreed that on account of their respective clients, there will not be delay in disposal of the appeal.

8. It is submitted that the A.D.J. 12 Patna Court is vacant, if it is fact then the Appeal may be transferred to any other running Court and the appeal shall be heard by the said Court as directed above. The Court below shall pass the order according to law without being influenced the order passed by this Court.

**(Mungeshwar Sahoo, J)**

Sanjeev/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|