

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.435 of 2012

IN

MA 243 of 2011

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Ganesh Singh @ Janesh Singh, son of late Mathura Singh, resident of Village-Rajpur Kosila, Police Station-Bihta, District-Patna.

Opposite party/ Respondent Petitioner/s

Versus

1. **Om Trijug Narayan Singh @ Triyug Narayan Singh**, son of Sri Kamla Singh, resident of Village-Rajpur Kosila, Police Station-Bihta, District-Patna.

Petitioner/Plaintiff/Appellant

Opposite party 1st set

2. **The Estate/ Goods of Late Ayodhya Singh**, son of Babu Islok Singh, resident of village-Rajpur Kosila, Police Station-Bihta, District-Patna.

3. **Ram Ladoo Singh**, son of Late Mathura Singh, resident of village-Rajpur Kosila, Police Station-Bihta, District-Patna.

Opposite Party/ Respondent-

Opposite party 2nd Set

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Appearance :

For the Petitioner/s :	Mr. Rajiv Nayan Singh-Advocate Mr. Prakash Shekhar Kumar-Advocate
For the Respondent/s :	Mr. Jitendra Kishore Verma-Advocate Mr. Bhubneshwar Prasad-Advocate Mr. Abhishek Anand-Advocate Mr. Anjani Kumar-Advocate Mr. L. N. Das-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 31-03-2016

Petitioner/ respondent has filed instant petition in terms of Section 114 read with Order-47, Rule-1 of the C.P.C. asking for review of judgment/ order dated 05.04.2012 passed in Misc. Appeal No.243 of 2011.

2. Before adverting to merit of the case, salient feature of the present controversy is to be taken note of. As evident, testator, Ayodhya Singh had executed registered Will on 04.01.1983 in favour of Om Triyug Narain Singh (O.P. 1st Party/ Propounder) with regard



to his properties and the same was witnessed by Ram Nandan Singh as well as Uday Kumar Singh. After death of testator, Ayodhya Singh on 11.06.1991, a petition was filed for grant of letters of administration bearing L.A. Case No.123 of 2000, which was dismissed by the learned lower Court vide order dated 09.09.2006 mainly on the ground that on account of presence of suspicious circumstances which has not properly been explained at the end of legatee, make the Will doubtful one, though the Will was registered one. Against the aforesaid order, Misc. Appeal No.243 of 2011 has been drawn up before this Court whereupon both the parties were heard and by judgment/ order dated 05.04.2012, the same has been allowed, setting aside the order passed by the learned lower Court directing that letters of administration be issued in pursuance of Will dated 04.01.1983 with regard to the properties possessed by the testator Late Ayodhya Singh in favour of O.P. No.1/ Propounder.

3. Then thereafter, instant review petition has been filed by one of the respondents/ petitioner. The main ground taken up for review is that at an earlier occasion, question of limitation though has been incorporated under Para-3 of the judgment in casual way while referring the argument advanced on behalf of appellant/ O.P. No.1 and further, taken note of a Division Bench decision of this Court, ***Ramanand Thakur v. Parmanand Thakur reported in A.I.R.1982***



Patna 87, failed to discuss and decide, more particularly in the background of the principle laid down by the Hon'ble Apex Court in a case reported in **2009(3) P.L.J.R. 80 (SC)** holding that Article 137 of the Limitation Act will be applicable during course of entertaining a petition for grant of probate/ letters of administration. Had there been proper appreciation of the principle laid down by the Hon'ble Apex Court on the score of limitation, then in that event, the judgment impugned was not at all expected as the death of testator was on 11.06.1991 while the petition has been filed in the year 2000 that means to say beyond the period of three years, without any prayer to condone the delay as cogent and valid explanation. Therefore, miscarriage of justice has occurred on account of non-appreciation of question of limitation in its right perspective.

4. It has also been submitted that as per Section 281 of the Indian Succession Act, verification of petition of probate or letters of administration was also to be made by one of the witness to the Will apart from having verification by the propounder in accordance with Section 280 of the Act, which the petition lacks. Further, elaborating the points, it has been submitted that petition did not speak regarding death of attesting witness or identifier. That being so, the petition was defective one and on account thereof, non-maintainable.



5. It has also been submitted that at an earlier occasion, as the petitioner failed to appear and contest, on account thereof, could not know regarding the actual affair and taking the aforesaid golden opportunity on account of his absence, got a false story advanced during course of trial by the propounder/ O.P. No.1 that attesting witness as well as identifier are dead and further, in order to prove their respective signatures, apart from PW-1, Pramod Kumar Sharma, who happens to be brother in-law (Sala) of propounder, PW-2, Devendra Singh, who happens to be brother in-law (bahnoi) of propounder, an interested witnesses, PW-3, propounder himself examined, but after perusal of their evidences, it is apparent that they failed to exhibit the document in accordance with Section 69 of the Evidence Act. In its continuity, it has been submitted that after disposal of the appeal, petitioner came to know that scribe as well as alleged witnesses are alive, then in that event, thorough enquiry is needed on that score which could conclusively suggest that the alleged Will dated 04.01.1983 is forged document. Therefore, forgery has been committed at the end of the appellant of the Misc. Appeal No.243 of 2011 (Propounder), not only during course of preparation of alleged Will dated 04.01.1983, but also during course of continuance of the proceedings.

6. It has also been submitted that for the aforesaid

purpose, a prayer has been made before the learned lower Court under Section 340 of the Cr.P.C. to conduct an inquiry and the same is pending.

7. It has further been submitted that at an earlier occasion, the suspicious circumstance so prevailing and perceived, by the learned lower Court have completely been overlooked only on the ground that document in question happens to be registered one, as is evident from Para-5 of the judgment and so, needs reappraisal which could be done only during course of consideration of instant review petition.

8. It has further been submitted that provision of review has specifically been brought up in order to rectify the mistake, illegality having caused at an earlier occasion and should be exercised to meet the ends of justice.

9. On the other hand, the learned counsel for the respondent has submitted that whatever grounds have been raised at the present moment, was already available before the petitioner at the time of hearing of appeal. The First Appellate Court while hearing appeal has vast power in order to appreciate the factual as well as legal aspect being involved in the appeal and once the appeal is decided, then in that event, review, if in case so prayed for, will be entertainable only on limited question that too, having the error

apparent from the order itself and for that purpose, fishing of evidences are not at all permissible and in likewise manner, meticulous consideration thereof.

10. Furthermore, it has been submitted that while appreciating the prayer of review, court is forbidden to act like an appellate court. Therefore, the points so raised on behalf of petitioner did not fulfil the criteria of review rather it may happen to be good ground for filing appeal which, the petitioner may avail. Consequent thereupon, the petition is not maintainable.

11. The first and foremost question to be decided at the present moment relates with ambit and scope of review. In ***Inderchand Jain (dead) through legal representatives v. Motilal (dead) through legal representatives reported in (2009) 14 SCC Page-663***, it has been held:-

7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a Civil Court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code means subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural

conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

"17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:

"1. Application for review of judgment.--(1) Any person considering himself aggrieved--

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order



made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

"8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In Rajendra Kumar v. Rambai [AIR 2003 SC 2095], this Court held:

6 "The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.

"9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within



the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

“10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

“11. Review is not appeal in disguise. In Lily Thomas v. Union of India [AIR 2000 SC 1650], this Court held :

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise.....

"34. In *Board of Control for Cricket in India & Anr. v. Netaji Cricket Club & Ors.* [(2005) 4 SCC 741], this Court held:

"89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

"90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

"35. It was furthermore observed:

"94. In Rajesh D. Darbar and Ors. v. Narasingrao Krishnaji Kulkarni and Ors. (2003)7SCC219, this Court noticed:

"4. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts.

6..... The courts can take notice of the subsequent events and can mould the relief accordingly. But there is a rider to these well established principles. This can be done only in exceptional circumstances, some of which have been highlighted above. This equitable principle cannot, however, stand in the way of the court adjudicating the rights already vested by a statute. This well settled position need not detain us, when the second point

urged by the appellants is focused. There can be no quarrel with the proposition as noted by the High Court that a party cannot be made to suffer on account of an act of the 23 Court. There is a well recognised maxim of equity, namely, actus curiae neminem gravabit which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia, i.e. the law does not compel a man to do that what he cannot possibly perform".

"36. Furthermore, in Jagmohan Singh v. State of Punjab & Ors. [(2007) 7 SCC 38], this Court held :

"16.....It is furthermore evident that Order 47 Rule 1 of the Code of Civil Procedure does not preclude the High Court or a court to take into consideration any subsequent event. If imparting of justice in a given situation is the goal of the judiciary, the court may take into consideration (of course on rare occasions) the subsequent events."

12. The three Judges Bench decision relating to S.

Bagirathi Ammal v. Palani Roman Catholic Mission reported in ***(2009)10 SCC 464***, has held:-

"11. Since we have already narrated the case of both the parties in the paragraphs supra, there is no need to traverse the same once again. Before considering the rival claims made by both the parties, it is useful to refer the provisions under Order XLVII Rule 1 C.P.C. relating to Review which read as under:

"1. Application for review of judgment:- (1)
Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other



sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) *A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.*

[Explanation _ The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.)"

A reading of the above provision makes it clear that Review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on



account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the party may apply for a review of the judgment or order of the Court which passed the decree or order. The provision also makes it clear that an application for Review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn

in favour of the appellant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set at right by reviewing the order. With this background, let us analyze the impugned judgment of the High Court and find out whether it satisfy any of the tests formulated above.”

13. In *State of Rajasthan and another v. Surendra Mohnot and others* reported in (2014) 14 SCC 77, it has been held:-

“23. In M/s Thungabhadra Industries Ltd. v State of Andhra Pradesh AIR 1964 SC 1372, while dealing with the concept of review, the Court opined thus:-(AIR P.1377, Para 11)

“11.....A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial

point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

“24. In Northern India Caterers (India) Ltd, v. Lt. Governor of Delhi (1980) 2 SCC 167, R.S. Pathak, J (as His Lordship then was) while speaking about jurisdiction of review observed that:(SCC p. 172, para 8)

“8.....it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except ‘where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility’.”

“25. To appreciate what constitutes an error apparent on the face of the record the observations of the Court in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale AIR 1960 SC 137 are useful:-(AIR p. 137)

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions



can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

14. After considering Section 114 read with Order-47, Rule-1 of the C.P.C. as well as perceiving the principle enunciated by the Hon’ble Apex Court as referred above, permissibility of review is found extended in case:-

- a) On the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when order was passed.
- b) On account of some mistake.
- c) Where error is apparent on the face of the record or is a palpable wrong.
- d) Any other sufficient reason, but during exercise of such power the Court should not act as an appellate court testing its own judgment in a manner as is permissible while adjudicating upon an appeal coupled with the fact

that during course of such exercise, the Court is not expected to deep into and collect the irregularity or illegality committed at an earlier occasion.

15. Now, coming to the facts of the case keeping in mind the settled principle of law as indicated above regarding permissibility of a review against an order/ judgment, it is apparent that though document has been filed to suggest that Tarkeshwar Prasad, scribe was alive, but scribe being dead or alive is not a material aspect to be taken into consideration as law does not warrant his presence to decide over genuineness of Will or would have adverse impact in case of non-examination. So far attesting witness as well as identifier are concerned, there happens to be mere a ground enumerated under the petition without any supportive document being alive during course of pendency of petition. Allowing close scrutiny on that score, will warrant permitting a new evidence as well as appraisal of material afresh which, review did not permit.

16. Now remains the other two points which have got complete coverage of law. In Krishna Kumar Sharma v. Rajesh Kumar Sharma reported in 2009(3) P.L.J.R. 80 (SC), it has been held:-

“4. Learned counsel for the appellant submitted that the interpretation placed by the

High Court is not correct. The primary question that needs reconsideration is whether Article 137 of the Limitation Act is applicable. It appears that certain other aspects were considered by the High Court to which reference shall be made subsequently.

5. *In The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma [1976 (4) SCC 634] it was inter alia observed as follows:*

"18. The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other applications as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure Code other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any



application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.

22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in Athani Municipal Council case and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act."In terms of the aforesaid judgment any application to Civil Court under the Act is

covered by Article 137. The application is made in terms of Section 264 of the Act to the District Judge. Section 2(bb) of the Act defines the District Judge to be Judge of Principal Civil Court.

6. Further in *S.S. Rathore v. State of M.P.* [1989(4) SCC 582] it was inter-alia stated as follows:

"5. Appellant's counsel placed before us the residuary Article 113 and had referred to a few decisions of some High Courts where in a situation as here reliance was placed on that article. It is unnecessary to refer to those decisions as on the authority of the judgment of this Court in the case of *Pierce Leslie & Co. Ltd. v. Violet Ouchterlony Wapshare* it must be held that Article 113 of the Act of 1963, corresponding to Article 120 of the old Act, is a general one and would apply to suits to which no other article in the schedule applies."

7. Article 137 of the Limitation Act reads as follows:

"137. Description of application:

Any other application for which no period of limitation is provided elsewhere in the

Division.

*Period of Limitation: Three Years Time
from which period begins to run:*

When the right to apply accrues."

The crucial expression in the petition is "right to apply". In view of what has been stated by this Court, Article 137 is clearly applicable to the petition for grant of Letters of Administration. As rightly observed by the High Court in such proceedings the application merely seeks recognition from the Court to perform a duty because of the nature of the proceedings. It is a continuing right. The Division Bench of the Delhi High Court referred to several decisions. One of them was S. Krishnaswami and etc. etc. v. E. Ramiah (AIR 1991 Madras 214). In para 17 of the said judgment it was noted as follows:

"17. In a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the Court to perform a duty. Probate or letter of Administration issued by a competent Court is conclusive proof of the legal character



throughout the world. An assessment of the relevant provisions of the Indian Succession Act, 1925 does not convey a meaning that by the Proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the Court to perform that duty. There is only a seeking of recognition from the Court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a view to discharge the moral duty, the applicant seeks recognition from the Court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an

'application' under Art. 137 of the Limitation Act, 1963."

8. *Though the nature of the petition has been rightly described by the High Court, it was not correct in observing that the application for grant of probate or letters of Administration is not covered by Article 137 of the Limitation Act. Same is not correct in view of what has been stated in The Kerala State Electricity Board's case (supra).*

9. *Similarly, reference was made to a decision of the Bombay High Court's case in Vasudev Daulatram Sadarangani v Sajni Prem Lalwani (AIR 1983 Bom.268).*

Para 16 reads as follows:

"16. Rejecting Mr. Dalapatrai's contention, I summarise my conclusions thus:--

(a) under the Limitation Act no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;

(b) the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;



(c) such an application is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;

(d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the date of the deceased's death.

(e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;

(f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and

(g) once execution and attestation are proved, suspicion of delay no longer operates".

10. These aspects were highlighted in Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors. (2008 (8) SCC 463)."

17. As is evident from the order impugned that during



course of submission, the learned counsel for the Appellant/ Opposite Party was very much conscious that question of limitation was persisting as main hurdle, and for that relied upon *A.I.R. 1982 Patna 87*, however neither question of limitation was taken up and decided nor issue decided by the Hon'ble Apex Court in *2009 (3) P.L.J.R. 80 (SC)*, was taken into consideration.

18. It is evident from the petition as well as from the evidences of the witnesses, more particularly the Opposite Party himself, neither question of limitation has been perceived nor explained. Furthermore, no prayer with a cogent, reliable explanation has been advanced to condone the delay. That being so, there happens to be major defect persisting on account of filing of present petition beyond the period of limitation as prescribed under Article 137 of the Limitation Act, three years.

19. Furthermore, it is apparent from the petition that there happens to be complete silence with regard to death of both the witnesses relating to Will. During course of evidence, it has been disclosed that both the witnesses are dead. From Annexure-4 series, evidences of three PWs, it is evident that they simply disclosed that both the witnesses as well as scribe are dead. But it has not been disclosed at their end that they died before filing of the petition or after filing of petition.

20. Section 281 of the Indian Succession Act requires verification of petition at the end of one of the witnesses, and having failed to fulfil the requirement, makes the petition defective one. When the petition was filed without complying mandate of law, then in that event, petition would not have been entertained. Whether such deficiency was sufficient to erase the prayer of the propounder, is another circumstance, which has gone unnoticed at an earlier occasion. Once, the law requires performance of certain activity before acceptance of petition, then in such circumstance, those requirements are to be fulfilled, otherwise, it will adversely affect upon maintainability of the petition.

21. After giving thoughtful consideration over facts and circumstances as well as legal deficiencies persisting on the record ultimately appeal to allow this review petition. Consequently, is allowed. However, parties will bear their own costs.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-31.03.2016
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