

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.19 of 2016

=====

1.The State Of Bihar through Secretary Road Construction Department, Vishweshraiya Bhawan, Bailey Road, Patna.
2.The Engoioneer-in-chief Road Construction Department, vishveshwariya Bhawan, Bailey Road, patna.
3.The Chief Engineer, National Highway Wing Department of Road Constructio Government of Bihar, Vishveshwariya Bhawan Bailey Road, Patna.
4.The Executive Engineer, National High Way Division, Gulzarbagh, Patna.

.... Petitioners

Versus

M/s. Dayanand Prasad Sinha & Co. A partnership Firm having its place of business at Janta Path, Kankarbagh, P.s. Kankarbagh, District Patna through one of its Partnet, Dayanand Prasad Sinha, son of Sri Harbanshi Lal, Resident of Janta Path, P.S. Kankarbagh, District Patna.

.... Opposite Party.

=====

Appearance :

For the Petitioner/s : Mr. Sita Ram Sharan

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

4 09-03-2016 Heard learned counsel for the petitioners in limitation petition (I.A. No. 1646 of 2016).

2. This interlocutory application has been filed under Section 5 of the Limitation Act praying for condonation of delay in filing of this revision application. The Office has pointed out that there is delay of two years, two months and seventeen days in filing this revision application.

3. From the perusal of the averments made in the petition for condonation of delay, it appears that initially it was stated therein that there was delay of only 414 days as the limitation for filing this revision application has expired on

03.01.2013. After making the statements regarding the movement of file from one government official to another Government official, the following statement has been made in paragraph nos. 24 and 25 of the aforesaid interlocutory application, which reads as follows:-

"24. That the counsel who had been preparing the civil revision fall ill from the July 2013. He was Hospitalised for treatment of his liver. But his condition did not improve. He was then advised to get himself checked up in Asian Institute of Gastroentology , Hyderabad. After relieve he again feel ill/bed ridden. Thereafter he was suffering from acute Jaundice. He was kept in ICU in local Jagdish Hospital. Thereafter he was rushed to ILBS, New Delhi where he was kept in emergency Ward. In the month of October he was referred to CMC, Vellore where he was treated till January 2015. The meantime time efforts were made to obtain file from his office, some how file was obtained from his office in the last week of January 2015.

25. Now after finalization it is being filed on 20.02.2014."

4. From the perusal of the petition for condonation of delay, it is manifest that the illness of the learned counsel who was assigned the brief has raised as primary ground for the condonation of long delay of more than two years and the statement has been made in the above paragraph that the said learned counsel remained ill till January 2015 whereafter the file was obtained from his office and after finalization, it has been filed on 20.02.2014. It is also evident that the date '20.02.2014' has been written by hand and not typed and the affidavit has been sworn by a person who does not appear to be a party in the



revision application. Apparently the facts stated in the petition for condonation delay do not find corroboration from the facts appearing from the records. It would also be relevant to state here that though the name of the learned counsel who was said to have been assigned the brief for filing the petition has not been disclosed in the condonation petition, it has been accepted during the course of submission that the name of the said counsel was Mr. S.R. Sharan and it was also further submitted during the course of argument on behalf of the petitioners that the said learned counsel expired in the month of September-2015.

5. From the perusal of the revision application, it appears that the revision application has been filed through Mr. S.R. Sharan, AC to AAG-5 and the said learned counsel had put his signature on 06.02.2015 on the title page of the revision application. It further appears that the interlocutory application no. 1646 of 2016 has also been filed through the same learned counsel who had put his signature on the first page of the interlocutory application on 06.02.2015. It will be relevant to notice that the I.A. No. 1646 of 2016 has been filed on 19.02.2016 and the revision application has also been filed on 19.02.2016, though according to the submissions on behalf of



the petitioners, the learned counsel Mr. S.R. Sharan, Advocate expired in the month of September-2015. There is no explanation to the fact as to how the civil revision application and the interlocutory application have been filed through an advocate who had expired months ago. This Court also finds that the petitioners has not approached this Court with clean hands making the correct statement of facts as there is also no statement that the brief of filing civil revision application against the impugned award of the Tribunal passed on 03.12.2012, was assigned exclusively to the said learned counsel. It appears that the entire case for condonation of delay has been purposely made out taking the benefit of the death of the said learned counsel. The name of the learned counsel has not been disclosed and also the fact that there is no document supporting the case of long illness of the said learned counsel. At this juncture, it would also be worth to take notice of the submission made on behalf of the petitioners that the said learned counsel Mr. S.R. Sharan used to come to this Court even during the period of his illness though no such statement has been in the petition for condonation of delay.

6. It is well settled by now, that even the State as a party in a litigation cannot be treated on a different pedestal by

the court as laid down by the Apex Court in the case of *State of Uttar Pradesh & Anr vs Amar Nath Yadav* reported in 2014(2) SCC 422.

7. Even after keeping in view the bureaucratic delay in movement of the file in the present case, it does not appear that the petitioners have come out with correct facts in support of their prayer for condonation of delay and the casual manner in the conduct of this case is explicit enough. This Court, therefore, is not satisfied that the petitioners have made out a case for condonation of delay of more than 2 years in filing this revision application. The interlocutory application (I.A. No. 1646 of 2016) is accordingly dismissed.

8. The civil revision application, in consequence, is also dismissed as barred by limitation.

(V. Nath, J)

Ranjan/-

U			
---	--	--	--