

Civil Writ Jurisdiction Case No.3881 of 2013

C.R. 206 of 2012

–(Plaintiffs-Respondents 1st Set)-Petitioners.

---(Defendant-Appellant)-Opposite Party.

–(Defendant-Respondent 2nd Set). Respondents.

For the Respondent/s : Mr. J.S. Arora

ORAL JUDGMENT

Heard the learned counsel for the petitioners and

Aggrieved by the impugned order passed by the appellate court below whereby the delay in filing the appeal has been condoned and the condonation petition filed on behalf of the appellant has been allowed without notice to the respondents in appeal and without affording opportunity of hearing, the present application under Article 227 of the Constitution of India has been filed.

It is not in dispute that the petitioners filed title suit wherein the respondents were impleaded as defendants. By

judgment and decree dated 16.03.2010 the said suit was decreed.

The respondents filed regular appeal before the appellate court on 20.07.2012 as appears from the ordersheet of Title Appeal No.78/2012 annexed with the writ application. It further transpires that by order dated 28.08.2012 the appellate court below has condoned the delay in filing the appeal, admitted the appeal for hearing and issued notice to the respondents.

The learned counsel for the petitioners has submitted that from the facts and ordersheet it is evident that no notice has been issued to the respondent-petitioners in the appeal by the appellate court below before proceeding to hear the prayer for condonation of delay and allow the same. The learned counsel appearing for the respondents has also not disputed the aforesaid fact that no notice was issued by the appellate court to the respondents before passing the impugned order whereby the delay was condoned and the appeal was admitted for hearing. It is clear therefore that the appellate court below has not adopted the procedure as prescribed whereby the notice to the other side is required before allowing the prayer for condonation of delay in filing the appeal and more so when the delay is substantial.

This Court, therefore, allows this writ application, quashes the impugned order dated 28.08.2012 and direct the

appellate court below to pass a fresh order after granting opportunity of hearing to the respondents in the appeal.

The writ application is, accordingly, allowed.

The learned counsel for the petitioners has submitted that in order to avoid delay in the matter, the petitioners would appear before the appellate court below within four weeks in Title Appeal No. 78/2012 (The State of Bihar Vs. Ram Naresh Dubey and Anr.). The appellate court below is directed to proceed in accordance with law after the appearance of the parties.

(V. Nath, J)

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