

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4356 of 2009

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Sanjay Kumar Tyagi, s/o late Jagjit Singh, r/v & P.O.- Barakatpur, P.S. Buland Sahar, District- Buland Sahar (U.P.)

.... Petitioner/s

Versus

The Union of India & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ANIL KUMAR SINHA
Mr. Mritunjay Kumar
Mr. Rajesh Kumar

For the Respondent/s : Mr. SUDHIR SINGH(ASST.SG)
Mr. Kumar Priya Ranjan

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 22-02-2017

Heard Mr. Anil Kumar Sinha, learned counsel for the petitioner and learned counsel for Union of India.

1. The petitioner filed this writ petition for quashing the order dated 20.06.1995 as contained in Annexure-8 and for quashing the order dated 11.01.1996 (Annexure-10) and further also for quashing the order dated 10.05.1999 (Annexure-13). The petitioner filed this petition after more than 10 years of the last order dated 10.05.1999 as contained in Annexure-13.

2. Mr. Anil Kumar Sinha, learned counsel for the petitioner submits that the petitioner preferred C.W.J.C. No. 7029 of 1999, which was dismissed on 03.07.2000 for non-prosecution. The petitioner thereafter filed MJC No. 2074 of 2007 for restoring



C.W.J.C. No. 7029 of 1999, but this Court vide order dated 04.12.2008 did not find sufficient explanation for filing the restoration petition after dismissal of C.W.J.C. No. 7029 of 1999 and accordingly, MJC No. 2074 of 2007 was also dismissed on 04.12.2008. Thereafter, the petitioner filed this writ petition explaining the delay.

3. Learned counsel for the petitioner submits that on account of laches on the part of the advocates of the petitioner, the petitioner could not be penalized. He placed his reliance on paragraph 4 of the judgment of the Supreme Court in **Smt. Lachi Tewari and Ors. Vs. Director of Land Records & Ors.** reported in **AIR 1984 SC 41**. Learned counsel further placed his reliance on paragraph 3 of the judgment of the Supreme Court in **Rafiq and another, Appellants Vs. Munshilal and another, Respondents** reported in **AIR 1981 SC 1400** which is as follows:

“The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court’s procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the



advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the high Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs. 200/- should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K. Sanghi.”

4. On the contrary, learned counsel for the respondent submits that it is sheer laches on the part of the petitioner, who did not



enquire about his case for more than seven years. The writ petition was dismissed for non-prosecution on 03.07.2000 and the restoration petition was filed in the year 2007. MJC No. 2074 of 2007 for restoration of C.W.J.C. No. 7029 of 1999 was dismissed on this ground that the laches is not duly explained and the reasons shown by the petitioner does not explain why the petitioner remained quiet for seven years even after dismissal of the writ petition.

5. Learned counsel for the respondent placed reliance on a judgment of this Court in **Ganga Prasad Singh Vs. The State of Bihar** reported in **2014 (3) PLJR 712**. The aforesaid judgment was passed relying on the judgment of the Supreme court in **Chennai Metropolitan Water Supply & Sewerage Board & Ors. Vs. T.T. Murali Babu**. Paragraph 16 of the judgment reads as follows:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant--a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and



second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill-health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons-who compete with "Kumbhakama" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

6. Having considered the facts and the submissions of the parties, this fact is admitted that the writ petition filed by the petitioner was dismissed on 03.07.2000 for non-prosecution. Although, the writ was listed at the instance of the petitioner, but the petitioner did not even enquire about the fact of his writ for seven years and after seven years the petitioner filed MJC No. 2074 of 2007 for restoration of C.W.J.C. No. 7029 of 2009. This Court dismissed the aforesaid MJC No. 2074 of 2007 on the ground that the laches on the part of the petitioner has not been explained at all and accordingly dismissed the



restoration petition. Thereafter, the petitioner filed a fresh writ. Therefore, I find that on the ground of laches the writ petition, filed by the petitioner, was dismissed and fresh writ is of no merit, I am not inclined to entertain this writ petition as well. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J.)

Rakhi

AFR/NAFR	
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