

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.305 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 4907 of 2009**

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Chamaru Chaudhary, son of Raghunath Chaudhary, resident of village - Pokharia,
P.S. - Balia, District - Begusarai.

.... Appellant/s

Versus

1. The State of Bihar through the District Magistrate, Begusarai.
2. The Deputy Development Commissioner, Begusarai.
3. The Block Development Officer, Balia, Begusarai.
4. The Secretary, Minor Irrigation Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Prasad, Advocate

For the Respondent/s : Mr. Jitendra Kumar, A.C. to AAG-14

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 25-01-2017

Re.:I.A. No. 1163 of 2016

The application is for condonation of delay of 305 days in
filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory
Application, we are satisfied that the appellant has shown sufficient
cause to seek condonation of delay of 305 days in filing the present
Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 1163 of
2016 is allowed and delay of 305 days in filing the Letters Patent



Appeal is condoned.

Re.: L.P.A. No. 305 of 2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 13th of January, 2015 in C.W.J.C. No. 4907 of 2009 whereby, while directing consideration of payment of Rs. 1,72,694/-, the appellant was not granted any interest claimed at the rate of 15 per cent on account of delayed payment.

3. We do not find that the appellant is entitled to interest as a matter of right. The grant of interest lies in the discretion of the Court not only in terms of Section 34 of the Code of Civil Procedure but also in terms of the Constitution Bench judgment in the case reported as Central Bank of India Vs. Ravindra and others, (2002) 1 SCC 367 wherein, it has been held that future interest is in the discretion of the Court. Relevant extract from the said judgment reads as under:-

“39. If there is no express stipulation for payment of interest the plaintiff is not entitled to interest except on proof of mercantile usage, statutory right to interest, or an implied agreement. Interest from the date of suit to the date of decree is in the discretion of the court. Interest from the date of the decree to the date of payment or any other earlier date appointed by the court is again in the discretion of the court – to award or not to award as also the rate at which to award. These principles are well established and are not



disputed by learned counsel for the parties. We have stated the same only by way of introduction to the main controversy before us which has a colour little different and somewhat complex. The learned counsel appearing before us are agreed that pre-suit interest is a matter of substantive law and a voluntary stipulation entered into between the parties for payment of interest would bind the parties as also the court excepting in any case out of the three exceptions set out hereinbefore.”

4. In view of the above, we do not find that the appellant is entitled to interest as a matter of right, once the learned Single Judge has not exercised discretion to grant interest to the appellant.

5. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	28.01.2017
Transmission Date	

