

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.111 of 2015

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1. Vidya Bhushan Charan
 2. Bibhuti Bhushan Charan
 3. Awni Bhushan Charan All sons of Rajendra Nath Charan resident of Village : -
 Ainwan, P.S. : - Khizersarai, District : - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through Collector Gaya.
 2. The Collector, Gaya, Gaya Collectorate Office, P.S. : - Civil Lines, District : -
 Gaya.
 3. Anchal Adhikari, Khizersarai Anchal, Anchal Office - Khizersarai, P.S. -
 Khizersarai, District : - Gaya.
 4. Mukhiya, Gram Panchayat, Pachlakh, Resident of Village : - Shahbajpur, Police
 Station : - Khizersarai, District : - Gaya.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. T.N. Maitin
 Mr.Rajeev Kumar Sinha
 For the Respondent/s : Mr. K. P. Gupta GP X
 Mr. Binod Kumar, AC to GP X

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 24-08-2017

1. Supplementary affidavit is filed on behalf of the
 petitioners.

2. Heard learned counsel for the petitioners as well as
 learned counsel for the opposite parties.

3. This revision petition has been filed under Section 115
 of the Code of Civil Procedure against the order dated 18.9.2015
 passed by the District Judge, Gaya in Title Appeal No.7 of 2015
 by which and whereunder he allowed limitation petition filed
 under Section 5 of the Limitation Act on behalf of the opposite



parties condoning the delay in filing Title Appeal No.7 of 2015.

4. The brief fact which lies to file this revision petition is that father of the petitioners filed Title Suit No.67 of 1998/146 of 1993 against opposite parties for declaration of his title, confirmation of possession and also for permanent injunction in respect of suit land. In the aforesaid suit, opposite parties appeared and sought adjournment for filing written statement and also for filing show cause against injunction petition. The learned Execution Munsif, Gaya gave several adjournments for filing written statement as well as show cause but the opposite parties failed to file show cause as well as written statement as a result whereof learned Execution Munsif proceeded with the aforesaid suit and subsequently judgment was pronounced under Order-VIII Rule 10 of the C.P.C. on 10.7.1998. However, plaintiff of the aforesaid Title Suit No. 67 of 1998/146 of 1993 filed a petition before C.O, Khizersarai for mutation on the basis of aforesaid judgment sometime in the year 2003 but nothing was done on the aforesaid petition and in the meantime, plaintiff of Title Suit No. 67 of 1998/146 of 1993 died and thereafter, in the year 2013 petitioners being legal heirs of plaintiff of Title Suit No. 67 of 1998/146 of 1993 again filed a petition for fixation of rent upon which Rent Fixation Case No.3 of 2013-14 was registered on



13.11.2013 and in course of enquiry of the aforesaid Rent Fixation Case No.3 of 2013-14, the concerned officer noticed the above stated judgment dated 10.7.1998 passed in Title Suit No. 67 of 1998/146 of 1993 and accordingly, DCLR directed the C.O, Khizersarai to file appeal against the aforesaid judgment dated 10.7.1998 with consultation of Government Pleader. Thereafter, relevant documents were sent to Government Pleader, Civil Court, Gaya vide letter no.655 dated 14.10.2014 seeking opinion of the Government Pleader who subsequently gave his opinion for filing appeal against the judgment dated 10.7.1998 and, thereafter, Title Appeal No.7 of 2015 was filed on 14.1.2015 and on the same day petition under Section 5 of the Limitation Act was filed mentioning therein that judgment dated 10.7.1998 passed in Title Suit No. 67 of 1998/146 of 1993 came to the notice of the opposite parties when Rent Fixation Case No.3 of 2013-14 was filed and thereafter, legal opinion of the Government Pleader, Gaya was obtained who gave his opinion regarding filing of the appeal. However, before filing the appeal, opposite parties tried to ascertain this fact as to whether original plaintiff of Title Suit No. 67 of 1998/146 of 1993 was available or not and information regarding aforesaid fact was obtained from Halka Karamchari on 10.1.2015. Thereafter, Title Appeal No.7 of 2015 was filed. It has



further been mentioned in the petition under Section 5 of the Limitation Act that neither Government Pleader nor Addl. Government Pleader gave any information to the concerned authorities of the State Government regarding filing of above stated title suit as well as judgment pronounced in the aforesaid title suit and accordingly, it was prayed before learned District Judge that delay in filing the aforesaid appeal should be condoned. Petitioners filed rejoinder and the learned District Judge, having heard the parties and having considered the materials available on record, passed the impugned order condoning the delay in filing Title Appeal No.7 of 2015.

5. Learned counsel appearing for the petitioners submits that admittedly, Title Appeal No.7 of 2015 was filed near about after 16 years of the pronouncement of the judgment in Title Suit No. 67 of 1998/146 of 1993 and, as a matter of fact, no sufficient cause was shown for condonation of delay and moreover, judgment in Title Suit No. 67 of 1998/146 of 1993 was pronounced under Order-VIII Rule 10 of C.P.C which reflects that opposite parties had appeared in aforesaid Title Suit No. 67 of 1998/146 of 1993 but subsequently left pairvi and therefore, it can not be said that opposite parties were not aware about filing of Title Suit No. 67 of 1998/146 of 1993.



6. Learned counsel for the petitioners further submits that opposite parties can not claim that being State they are on different footing to that of other litigants because Limitation Act is applicable similarly to the State as well as common litigants. He further submits that if there is any bonafide delay in filing the appeal, then in that event, the delay may be condoned but if delay in filing the appeal is due to negligence and carelessness of the officials of the State, then, in that circumstance, delay in filing the appeal cannot be condoned. In support of his contention, he refers decision of **office of Chief Post Master General and ors. Vs. Living Media India Ltd. and ano reported in A.I.R.2012 S.C.1506** and submits that in the aforesaid judgment Apex Court refused to condone the delay of 427 days only on the ground that Chief Postmaster General failed to show sufficient cause for condoning the delay as Apex Court noticed that there was negligence on the part of the officials. He also relies upon decision of **Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai reported in A.I.R. 2012 S.C.1629** and submits that in the aforesaid case Apex Court refused to condone the delay of 7 years on the ground that delay not to be condoned as matter of course on the ground that dismissal will cause injury to public interest when the delay is due to total lethargy or utter negligence



of its officers. He also refers decision of **Brijesh Kumar & others vrs. State of Haryana and others reported in A.I.R. 2014 Supreme Court 1612** and submits that the Apex Court in the above stated decision held that for condonation of delay sufficient cause is a condition precedent for exercising discretion by court and accordingly, Apex Court refused to condone inordinate delay of ten years two months twenty nine days. He also cites decision of the case of **Dohil Construction Co. (P) Ltd. vs. Nahar Exports Ltd. & Anr. Reported in 2014 SAR (Civil Court 11) Supreme 28** in which Apex Court of this country held that law of limitation is based on sound public policy and, therefore, in the absence of bona fide reasons the application for condonation of delay should be strictly considered assumes significance and the court is required to weigh the scale of balance of justice in respect of both parties and furthermore, held that the aforesaid principle cannot be given a go-by under the guise of liberal approach.

7. On the other hand, learned counsel appearing for the State refutes the above stated submissions arguing that officials of the State came to know about judgment dated 10.7.1998 passed in Title Suit No.67 of 1998 when Rent Fixation Case No.3 of 2013-14 was filed and enquiry was made and prior to Rent Fixation Case No.3 of 2013-14, neither filing of Title Suit No.67 of 1998



nor judgment pronounced in that case was brought to the notice of the officials of the State. He further submits that when the aforesaid judgment dated 10.7.1998 came to the notice of official in Rent Fixation Case No.3 of 2013-14, D.C.L.R., without wasting time, immediately, gave direction to C.O., Khizersarai to file appeal against the aforesaid judgment and thereafter, C.O., Khizersarai obtained opinion of the Government Pleader who opined in favour of filing of appeal and thereafter, without any delay, appeal was filed and, therefore, it cannot be said that officials of the State Government committed negligence in filing the aforesaid appeal. Moreover, the present appeal was filed within time but by way of caution petition under Section 5 of the Limitation Act was filed which was allowed by the learned District Judge by passing well discussed and reasoned impugned order and therefore, this Court should not interfere into the finding of the learned District Judge. He, further, submits that now the aforesaid appeal is on the verge of disposal and, therefore, it would be needless for this Court to set aside the impugned order.

8. Having heard the contention of both parties and I have gone through the record. Petitioners have brought on record entire order sheets of Title Suit No. 67 of 1998/146 of 1993 which have been annexed as Annexure-5 to the supplementary affidavit.



Perusal of the aforesaid Annexure-5 goes to show that opposite parties had appeared in the aforesaid title suit and sought for adjournment for filing written statement and show cause to the injunction petition. Moreover, order dated 15.5.1997 of the aforesaid title suit goes to show that rejoinder was filed on behalf of the opposite parties in the aforesaid suit and therefore, it can not be said that opposite parties had no knowledge about filing and pendency of the aforesaid title suit. Apart from this, it would appear from the order sheet of the aforesaid title suit as well as impugned judgment that judgment in the aforesaid title suit was pronounced under Order-VIII Rule 10 of the C.P.C. The aforesaid facts clearly establish that not only filing of aforesaid title suit but pronouncement of the judgment was also in the notice of the concerned Government Pleader.

9. It has also been argued on behalf of the opposite parties that aforesaid title suit was collusive suit and, as a matter of fact, the then Government Pleader had not given any information to the concerned authorities regarding pronouncement of the judgment dated 10.7.1998 and moreover, rent fixation case was filed in the year 2013 and the aforesaid fact clearly shows mala fide intention of the petitioners because their intention was to suppress the judgment passed in the above stated title suit but I am



unable to accept the aforesaid contention because it is specific case of the petitioners that in the year 2003 their father had filed rent fixation case but no order was passed in the rent fixation case. Moreover, even if it assumed that the then Government Pleader had not given any information to the concerned authorities in respect of the pronouncement of the judgment in Title Suit No. 67 of 1998/146 of 1993, then also, for the act of the Government Pleader petitioners can not be made responsible. Furthermore, from perusal of the petition filed under Section 5 of the Limitation Act, it would appear that opposite parties have tried to explain the delay only after filing of Rent Fixation Case No.3 of 2013-14 but they have not whispered even a single word to explain the delay prior to filing Rent Fixation Case No.3 of 2013-14.

10. It is now well settled principle of law that State is at par with the common litigant when the court considers the limitation in filing the appeal and the State has no special status for consideration of point of limitation. It is also well settled principle of law that delay can not be condoned only on the ground that any public interest is involved in the matter. Therefore, in my view, learned District Judge, Gaya has committed error in condoning such inordinate delay which has not properly and satisfactorily been explained by the State and



therefore, on the basis of the aforesaid discussions, this revision petition is allowed and the impugned order dated 18.9.2015 passed by the learned District Judge, Gaya in Title Appeal No.7 of 2015 is, hereby, set aside as a result whereof limitation petition filed under Section 5 of the Limitation Act on behalf of the opposite parties stands rejected.

Shahid

(Hemant Kumar Srivastava, J)

AFR	AFR
CAV DATE	NA
Uploading Date	31.8.2017
Transmission Date	31.8.2017

