

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3481 of 2016

In

Miscellaneous Jurisdiction Case No. 2626 of 2015

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M/s Kamal Construction, At +P.O. Mehdauli, Begusarai, District Begusarai,
Bihar through its partner Kamalkant Singh son of Late Triveni Singh,
resident of Vill. + P.S.Bhagwanpur, District Begusarai

.... Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Sonpur, District Vaishali, Bihar
2. The Senior Divisional Engineer (Co-ord), East Central Railway, Sonpur, District Vaishali, Bihar
3. The Divisional Railway Manager (Engi), East Central Railway, Sonpur, District Vaishali, Bihar
4. The Divisional Engineer (Special), East Central Railway, Sonpur, District Vaishali, Bihar
5. The Additional Divisional Railway Engineer, East Central Railway, Sonpur, District Vaishali, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K.Verma, Sr. Advocate
Mr.Saroj Kumar Sharma, Advocate
For the Respondent/s : Mrs. Sudha Ambastha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 16-01-2017 The learned senior counsel appearing on behalf of the petitioner submits that defect nos. 1 and 2 pointed out by the stamp reporter shall be removed during the course of the day.

Let him do so.

Heard the learned senior counsel appearing on behalf of the petitioner as also the learned counsel appearing on behalf of the respondents on merits.

The present MJC application has been filed for modification of the order dated 13.04.2016 passed in MJC No. 2626 of 2015 arising out of CWJC No. 5046 of 2011, whereby the petitioner was granted liberty to file a fresh writ petition in the same subject matter, after bringing on record all the subsequent



developments, which might have taken place during the interregnum period.

The learned senior counsel appearing on behalf of the petitioner submits that CWJC No. 5046 of 2011 was filed on behalf of the petitioner-company through its one of the partners namely Yogendra Singh, but that writ petition was dismissed for want of prosecution vide order dated 22.06.2015. It is contended that in above view of the matter, MJC No. 2626 of 2015 was filed on behalf of the petitioner-company for restoration of the main writ petition, which was finally disposed of by order dated 13.04.2016. By the aforesaid order dated 13.04.2016, in stead of restoring the main writ petition to its original file, the petitioner was granted liberty to file a fresh writ petition in the same subject matter, after bringing on record all the subsequent developments, which might have taken place during the interregnum period. However, such a fresh writ petition was required to be filed within one month from the date of that order.

The learned senior counsel appearing on behalf of the petitioner further submits that, in the meantime, Yogendra Singh, one of the partners of the company through whom the original writ petition was filed, passed away. Therefore, a fresh writ petition could not be filed within the time prescribed. However, a fresh writ petition bearing CWJC No. 14409 of 2016 was filed on 05.08.2016 through another partner of the petitioner-company and in that process, there was delay of about two and half months. It is also pleaded by the learned senior counsel appearing on behalf of the petitioner that in the above background of the case, period for filing fresh writ petition may be extended up to 05.08.2016, when fresh writ petition was filed.



The learned counsel appearing on behalf of the respondents, though has argued the matter at length, but has not disputed the aforesaid factual matrices.

In the aforesaid factual matrices, this Court is satisfied that delay in filing the fresh writ petition was not deliberate; rather delay occurred on account of death of one of the partners namely Yogendra Singh through whom earlier writ petition was filed.

In above view of the matter and also on the ground of equity, this Court is inclined to accede to the prayer made in the present MJC application. Accordingly, order dated 13.04.2016 passed in MJC No. 2626 of 2015 is modified only to the extent that if a fresh writ petition was filed on behalf of the petitioner-company through its another partner on or before 05.08.2016 in the manner indicated in that order, then the same shall be considered and decided on its own merits without being prejudiced/influenced by dismissal of CWJC No. 5046 of 2011 for want or prosecution.

With the aforesaid observations/directions, the present MJC application stands finally disposed of.

(Birendra Prasad Verma, J)

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