

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.114 of 2009

=====

The State of Bihar & Anr

.... Appellant/s

Versus

Shri Manoj Kumar & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Manoj Kumar, AC to SC 12

For the Respondent/s : Mr. Ray Shivati Nath
Mr. Ray Saurabh Nath

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

6 25-04-2017 1. Heard learned counsel for the appellants as well as learned counsel for the respondents on I.A. No.4266 of 2009 which has been filed on behalf of the appellants for condonation of delay in filing the present appeal.

2. It has been averred in I.A. No.4266 of 2009 that the certified copy of judgment and decree passed in Title Suit No.92 of 1994 was obtained by the Superintendent, MJK Hospital i.e., appellant no.2 on 08.08.2008 and sought advice from the Government Pleader who, in his turn, advised appellant no.2 to file first appeal against the judgment and decree dated 16.07.2008/31.07.2008 passed in Title Suit No.92 of 1994. Thereafter, the appellant no.2 sought instructions from appellant no.1 vide letter no.642 dated 21.08.2008 on the question of filing of first appeal against the impugned judgment. It has further been



averred in the aforesaid interlocutory application that matter was processed at different higher levels and subsequently, Law Department gave its opinion to file appeal on 01.07.2009 and thereafter present appeal was filed on 15.07.2009 and therefore, the delay has been caused due to processing of the file at various offices of the Government.

3. Learned counsel appearing for the appellants submits that appellant no.2 was not, himself, competent to file the present appeal alone and before filing the appeal, he had to obtain permission from appellant no.1 and that was the reason he sent letter to appellant no.1 for getting permission but due to process of the aforesaid file at various offices of appellant no.1, delay was caused and therefore, the aforesaid delay is not intentional rather appellants could not file the appeal in time due to aforesaid reasons and therefore, delay in filing this appeal should be condoned.

4. On the other hand, learned counsel appearing for respondent no.1 points out that father of respondent 1st party filed Title Suit No.75 of 1984 against appellants and the aforesaid suit was decreed ex-parte sometime in the year 1985 but the appellants filed Title Suit No.92 of 1994 for setting aside the ex-parte decree passed in Title Suit No.75 of 1984, i.e., after nine years of passing



the judgment and decree in Title Suit No.75 of 1984. He further submits that the learned court below dismissed Title Suit No.92 of 1994 passing judgment and decree dated 16.07.2008/31.07.2008 and thereafter, appellants preferred this appeal near about after one year of passing of the judgment and decree in Title Suit No.92 of 1994. He further submits that the explanations given for delay in filing the present appeal are not sufficient and I.A. No.4266 of 2009 should be dismissed because the present appeal is hopelessly and highly time barred.

5. Admittedly, the present appeal has been filed near about after one year of passing the impugned judgment and decree. The reasons for delay have been mentioned in I.A. No.4266 of 2009 and the perusal of the contents of I.A. No.4266 of 2009 go to show that appellants dealt with concerned file in a very casual manner and it is well settled principle of law that if party neglects to file appeal within the time, the delay can not be condoned. It is also an admitted position that delay can only be condoned, if the appellants could show sufficient cause for the delay.

6. No doubt, the present appeal has been filed by the State of Bihar but it has already been set at rest in several judgments that State is also at par with common litigants and State cannot get any special privilege at the time of consideration of



delay. Therefore, I do agree with the submissions of learned counsel for the respondent that present appeal is hopelessly time barred and delay in filing the present appeal is not liable to be condoned and accordingly, I.A. No.4266 of 2009 stands rejected and consequently, the present memo of appeal stands dismissed being time barred.

Shahid/-

(Hemant Kumar Srivastava, J)

U			
---	--	--	--

