

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.48 of 2014

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Shambhu Saran Singh Son Of Late Radha Raman Singh Resident Of Village -
Dharupur, Police Station - Bikramganj, District - Rohtas

.... Petitioner

Versus

1. The Collector, Rohtas At Sasaram
2. The Circle Officer, Bikramganj, Police Station - Bikramganj, District - Rohtas

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Binod Bihari Singh

For the Respondent/s : Mr. KUNDAN BHADUR SINGH

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 07-02-2017

Heard Mr. Binod Bihari Singh, learned counsel
appearing for the petitioner and Mr. Binod Kumar, learned counsel
appearing for the opposite parties.

The learned counsel for the parties have made
their submissions on the merits of the revision application and with
the consent of the parties, the present revision application is being
disposed of by this order.

The fact is not in dispute that a Title Suit No.
144/1982 was filed by the present petitioner for declaration of his title
and possession over the suit land mentioned in Schedule-K of the
plaint and for further declaration that the survey khatian prepared in
the name of the opposite parties in the suit land was wrong. The



prayer in the suit was also made for confirmation of possession of the plaintiff and for permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiff. It transpires from the judgment passed in the aforesaid suit (Annexure-1) that the said suit was decreed on 15.06.1992 declaring the title of the plaintiff over the suit land, confirming his possession over the same and further restraining the defendants from interfering in peaceful possession of the plaintiff over the suit land. It also transpires from the reading of the said judgment that the same was passed after hearing the defendants. No appeal was filed by the defendants against the said judgment and decree within the statutory period of limitation. However, the T.A.No.51/2013 has been filed on 29.05.2013 alongwith a petition for condonation of delay in filing the appeal (Annexures-2 and 3). By the impugned order, the learned court below has condoned the delay allowing the petition filed by the appellants-opposite parties for condonation of delay in filing the appeal and has condoned the delay.

Mr.Singh , learned counsel appearing for the petitioner has submitted that the impugned order suffers from material irregularity as well as is not legally sustainable as it is not based upon the cogent evidence or materials available in support of the prayer of the condonation of delay as made by the appellants. It has been



canvassed that a bare reading of the impugned order shows that the learned court below has considered the merits of the case itself for the purpose of condonation of delay and has also believed the lame excuse of non-service of notice under Section 80 on the opposite party no.2-Anchal Adhikari for the purpose of condonation of delay. It has been pointed out by the learned counsel that the plea of non-service of notice under Section 80 was never raised in the suit by the defendants therein and demonstrably the judgment and decree was passed in the suit after hearing the parties.

The learned counsel appearing for the opposite parties, however, has supported the impugned order.

After considering the submissions and perusal of the materials on record as well as impugned order, it is manifest that the appeal in the court below was filed belatedly on 29.05.2013 against the judgment and decree passed in T.S.No.144/1982 on 15.06.1992. From perusal of the petition for condonation of delay (Annexure-3), it appears from the very 1st paragraph that the plea has been raised by the appellants that they had no knowledge regarding the judgment and decree passed in the T.S.No. 144/1982 before they received the notice of CWJC No.12242/2012. From the perusal of further averments in the said petition, it does not appear that any explanation has been furnished by the appellants regarding the fact



mentioned in the judgment of T.S.No. 144/1982 (Annexure-1) that the defendants-appellants had appeared in the suit and filed their written statement. The principles while considering the condonation of delay have been laid down by the apex court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy, (2013)12 SCC 649*** and it does not require much effort to find that the explanation furnished by the opposite parties in the petition for condonation of delay (Annexure-3) has been done in a casual manner even in face of inordinate delay of nearly 21 years. From the impugned order in this revision application, it is further demonstrable that the learned court below has not passed the impugned order in accordance with the principles as laid down by the apex court in ***Esha Bhattacharjee (Supra)***. The absence of explanation in any manner pertaining to the presence of the appellants in the proceeding of the suit has not at all been taken into notice by the appellate court below before allowing the prayer for condonation of delay. The limitation is a statute of repose and when the civil right has been declared in favour of a party by a competent civil court and not challenged in accordance with law within statutory period of limitation, the said right should not be lightly interfered with. The learned court below has apparently remained oblivious to these aspects. The consideration of the merit of the case or the convenience to



the public at large cannot be the only material facts to be considered in the facts and circumstances of the case while allowing the prayer for condonation of inordinate delay of nearly 21 years. This Court, therefore, is not convinced with the manner in which the prayer for condonation of delay has been allowed by the impugned order and holds that the impugned order deserves to be overturned.

The revision application is accordingly allowed and the impugned order is set aside. The matter is remitted back to the appellate court below which shall pass a fresh order on the condonation petition (Annexure-3) filed by the appellants-opposite parties after hearing the parties in accordance with law.

It is, however, observed that any observation in the present revision application shall not prejudice the case of either of the parties in the court below.

(V. Nath, J)

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