IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.160 of 2012

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1. Anil Kumar S/O Late Janki Ram R/O Village - Karah at present Silao Market, P.S. Silao, District - Nalanda
2. Sunil Kumar S/O Late Janki Ram R/O Village - Karah at present Silao Market, P.S. Silao, District - Nalanda
3. Baby Kumari D/O Late Janki Ram, W/O Shri Sanjay Kumar R/O Village - Dabor, Muffasil Sabzi Mandi, District – Nawadah .... Petitioners

Versus

1. Smt. Sona Devi Widow Of Late Chamari Ram R/O Village - Bagpur, P.S. Ekangar Sarai, District - Nalanda At Present Mohalla - Murarpur, P.S. & Town - Biharsharif, District - Nalanda
2. (i) Damodar Prasad.
   (ii) Pramod Kumar.
   (iii) Shambhu Kumar.
   (iv) Manoj Kumar.
   All sons of Late Ramchandra Ram, Resident of Village-Karah at present Silao Market, P.S.-Silaw, District-Nalanda.
3. Pramila Devi D/O Late Om Ram R/O Village - Karah at present Silao Market, P.S. Silao, District - Nalanda
4. Sunita Devi D/O Late Om Ram R/O Village - Karah at present Silao Market, P.S. Silao, District - Nalanda
5. Arvind Ram S/O Late Kedar Ram R/O Village - Karah at present Silao Market, P.S. Silao, District - Nalanda
6. Pradip Ram S/O Late Kedar Ram R/O Village - Karah at present Silao Market, P.S. Silao, District - Nalanda
7. Arun Ram S/O Late Kedar Ram R/O Village - Karah at present Silao Market, P.S. Silao, District - Nalanda
8. Dilip Ram, S/O Late Kedar Ram R/O Village - Karah at present Silao Market, P.S. Silao, District – Nalanda.
9. Smt. Parbati Devi W/O Suresh Ram, D/O Late Buttan Ram R/O Village and P.S. Silao, District – Nalanda .... Opposite Parties

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Appearance :
For the Petitioner/s : Mr. Rekha Prasad, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date: 23-11-2017

Heard learned counsel for the petitioners.

2. A brief background of this MJC application is that the Second Appeal No. 330 of 1991 was brought on 24.07.1991 by Janki Ram, the defendant of the suit against

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concurrent finding of the courts below. Janki Ram was father of the petitioners. Janki Ram died during the pendency of the second appeal on 28.12.1995. Thereafter one of the son of Janki Ram namely Sunil Kumar, who is one of the petitioner herein and Jogeshwari Devi, widow of Janki Ram filed Vakalatnama in the second appeal on 09.10.1996 through Mr. Vishnu Kumar Sharma and Mr.Ashutosh Kumar Singh, Advocates. However, substitution petition could not be filed for substitution of the legal heirs of the sole appellant. Hence, the second appeal stood dismissed as abated by order dated 27.09.2001.

3. For setting aside the aforesaid dismissal, MJC No.2660/2003 was filed by the petitioners under Section 151 of the Code of Civil Procedure on 18.12.2003 through Mr.Hans Raj, Advocate. That MJC application also stood dismissed on 13.01.2005 for non-compliance of peremptory order dated 06.01.2005, whereby peremptory time was granted for removal of the defects in the MJC application. Thereafter, the present application under Section 151 C.P.C. has been filed for restoration of MJC No. 2660 of 2003 alongwith a separate petition under Section 5 of the Limitation Act for condonation of the delay in filing of the present application.

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4. Submission of the learned counsel for the petitioners is that on each occasion i.e. dismissal of the second appeal or dismissal of the MJC application, it was the negligence of the conducting lawyer and not of the petitioners and, for that reason, substantial justice could not be allowed to be defeated. Moreover, the inherent power of the Court is there to do complete justice and the present facts and circumstances of the case would reveal that this one is a fit case for exercise of inherent jurisdiction of the Court, as final outcome of the exercise of the power in favour of the petitioners would be adjudication of the points raised in the second appeal. Learned counsel for the petitioners has placed reliance on a Full Bench judgment of this Court delivered by five Hon'ble Judges in ***Bajran Raj Vs.Ismail Mian reported in AIR 1978 Patna 339,*** for the proposition that a petition under Section 151 C.P.C. is maintainable for restoration of MJC application brought for restoration of the second appeal.

5. There is no dispute regarding the aforesaid proposition in view of the referred judgment. However, it is well settled that the inherent power cannot be exercised to defeat the specific statutory provision. Article 122 of the Limitation Act, 1963 provides for 30 days' time to file application for restoration of the suit/appeal/applications

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from the date of its dismissal. Apparently, the present application has been filed on 12.01.2012 after delay of several years from the date of dismissal of MJC No. 2660 of 2003.

6. Hence, the point for consideration is whether the aforesaid inordinate delay has sufficiently been explained in the petition filed under Section 5 of the Limitation Act. The law is also well settled that the Court should be liberal in condonation of short delay. However, should be strict and cautious while considering unexplained/inordinate delay in bringing the matter before the Court. In the petition filed under Section 5 of the Limitation Act, the petitioners have stated that the original appellant Janki Ram died on 28.12.1995 leaving behind his two sons and a daughter who are petitioners herein. Since the petitioners were minor, they had no knowledge of the pendency of second appeal aforesaid till before 05.12.2003 when they heard rumour in the village that second appeal has been dismissed.

7. The aforesaid statement is completely wrong which would be evident from the perusal of the record of second appeal wherein a Vakalatnama was filed by the widow of Janki Ram as well as one of the petitioner Sunil Kumar in the year 1996 itself and much prior to the dismissal of the second appeal as abated on 27.09.2001. The aforesaid

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fact has deliberately been suppressed in the petition filed under Section 5 of the Limitation Act. Hence, the explanation for delayed filing of the MJC application for restoration of the second appeal is not acceptable.

8. So far explanation of the delay in filing of the present application is concerned, it is again stated that the petitioners were in contact of their lawyer, Mr.Hans Raj, but he always assured that the MJC application is pending before this Court. However, on 21.11.2011, petitioner Anil Kumar came to Patna and tried to get information about his case then came to know regarding dismissal of the MJC application in pursuance of order dated 06.01.2005. There is no further explanation for willful laches in not attending the MJC application for such a long period though the second appeal was already dismissed for default and a delayed petition for restoration of the same was filed.

9. In ***Easha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors reported in (2013) 12 SCC 649***, the Hon'ble Apex Court culled out the following broad principles while considering the issue of condonation of delay under Section 5 of the Limitation Act. Paras 20 to Para 22 of the judgment are being reproduced below:

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*"**20.** In B. Madhuri Goud v. B. Damodar Reddy the Court referring to earlier decisions reversed the decision of the learned Single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.*

***21.** From the aforesaid authorities the principles that can broadly be culled out are:*

***21.1.** (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

***21.2.** (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

***21.3.** (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

***21.4.** (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

***21.5.** (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

***21.6.** (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate*

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eventuate there is no real failure of justice.

21.7. *(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. *(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. *(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. *(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. *(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. *(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not*

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on individual perception.

21.13. *(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

22.1. *(a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

22.2. *(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

22.3. *(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

22.4. *(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."*

10. The present one is a case of inordinate delay. The explanation given by the petitioners is absolutely

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fanciful in the sense that it is simply stated that the conducting lawyer did not inform to the petitioners. The very same was explanation for non-attending the case for such a long time, while filing the MJC application for restoration of the second appeal. Apparently, this was a case of gross negligence on the part of the counsel in not informing the petitioners within time even if the statement of the petitioners is assumed to be correct. If such inordinate delay would be condoned in a casual manner only on the basis of bald statement that the counsel who was engaged by the petitioners did not inform to the petitioners regarding dismissal for default it would certainly cause prejudice to the other side to be dragged in the litigation even after such a long delay.

11. Accordingly, I am of the view that the delay in filing of this application has not been explained and the petitioners have failed to show that the petitioners had sufficient cause for not approaching the Court within time.

12. Accordingly, this application stands dismissed as barred by limitation.

(Birendra Kumar, J)

Nitesh/-

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