

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.639 of 2017

In

Civil Writ Jurisdiction Case No. 19809 of 2011

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1. The State of Bihar through Principal Secretary, Water Resource Department.
 2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
 3. The Engineer-in-Chief (Central) Water Resources Department, Government of Bihar, Patna.
 4. The Chief Engineer, Water Resources Department, Valmiki Nagar, West Champaran, Bihar.
 5. The Chief Engineer, Water Resources Department, Muzaffarpur.
 6. The Engineer in Charge, Water Resources Department, Chekie, Motihari, East Champaran.

.... Appellants

Versus

M/s NCC Ltd. (Formerly known as Nagarjuna Construction Company Limited) 41 Nagarjuna Hills, Hyderabad-82 through Vice President Mr. B.A.N. Raju, Son of Late Venkatapathi Raju, Residing at Plot No. 789, Sri Residency, 4th Floor, Bhagath Singh Nagar, Near Vasanth Nagar, Hyderabad.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Raj Ballabh Prasad Yadav, AAG-11

For the Respondent/s : Mr. Y.V. Giri, Sr. Adv

Mr. Ashish Giri, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

11 22-11-2018 Heard Shree Raj Ballabh Prasad Yadav, learned counsel

for the State-Appellants and Shree Ashish Giri, learned counsel

for the Respondent-Company.

The matter had been taken up earlier and a detailed
order was passed by a Bench on 3rd of August, 2018 followed by
another order on 21st of August, 2018, that are to the following



effect:

“03-08-2018 Re: I.A. No. 5531/2018 with I.A. No. 5532/2018

Leave is granted to the learned Counsel for the respondent to make appropriate correction in the provision of law in the two interlocutory applications.

I.A. No. 5532/2018 is filed on behalf of the sole respondent, who was the writ petitioner before the learned Single Judge, praying for recall of the order dated 11.04.2018 whereby a Co-ordinate Bench while considering the I.A. No. 2481/2017 filed on behalf of the appellant – State of Bihar for condonation of delay of 4 years and 21 days in filing the appeal, has allowed the prayer to condone the delay.

The second I.A. No. 5531/2018 has been filed by the respondent - writ petitioner for recall of the admission order dated 26.04.2018 which again is ex-parte and while issuing notice, a Co-ordinate Bench has stayed the operation of the judgment and order of the learned Single Judge.

We have heard Mr. Y.V. Giri, learned Sr. Counsel appearing with Mr. Ashish Giri, Advocate on record for the respondent-writ petitioner on the recall applications and Mr. Raj Ballabh Prasad Yadav, learned AG 11 for the State.

Mr. Giri in his short submission has urged that once a right had accrued in the respondent-writ petitioner by expiry of the limitation prescribed under the Letters Patent of the High Court of Judicature at Patna read alongside the rules framed in this regard, to file the appeal, the delay of more than 4 years certainly can not have been condoned without opportunity of hearing to the respondent-writ petitioner. He submits that a valuable right, accrued to the respondent-writ petitioner, has been taken away without opportunity of hearing. Learned Counsel relies upon a judgment and order of a five Judges Bench reported in **AIR 1917 Privy Council 179 (Krishnasami Panikondar Versus Ramasami Chettiar)** to submit that the submissions find support from the order passed by the Lordships of



Privy Council.

Per contra, it is the argument of Mr. Yadav, learned AAG 11 in opposing the recall application to submit that once delay has been condoned and the appeal admitted, it may not be recalled, rather the matter itself could be considered and disposed of on merits.

Having heard learned Counsel for the parties, we record our satisfaction on the grievance so raised by the respondent-writ petitioner for the present appeal is delayed by more than 4 years when the limitation period of 30 days is prescribed for filing such intra-Court appeal. In our opinion the moment this limitation period expires, a right does vest in a party to enjoy the fruits of the judgment/ order appealed against and which right ordinarily, should not be taken away unless, the delay is so negligible and is well explained.

We are persuaded to reproduce the extract of the opinion expressed by the Privy Council on the issue which fully supports the grievance raised herein through the recall application in question. In fact the objection, raised by Mr. Yadav on the recall application, inter alia, by submitting that once a delay is condoned, the order may not be disturbed, was also raised before the Privy Council and while rejecting such opposition the Privy Council expressed their opinion in following words:

“ It has been argued that the admission of the appeal by Sankaran Nair, J., was final, and that the Division Bench had no jurisdiction at the hearing of the appeal to reconsider the question whether the delay was excusable. But this order of admission was made not only in the absence of Ramasami Chettiar, the contesting respondent, but without notice to him. And yet in terms it purported to deprive him of a valuable right, for it put in peril the finality of the decision in his favour, so that to preclude him from questioning its propriety would amount to a denial of justice. It must, therefore, in common fairness be regarded as a tacit term of an order like the present that though unqualified in expression it should be open to reconsideration at the instance of the party prejudicially affected; and



this view is sanctioned by the practice of the Courts of India.”

We are fortified in our opinion by a later judgment of the Supreme Court reported in **(2014)2 SCC 788 (Tribhuvanshankar v. Amrutlal)**. We adopt the expression present at paragraphs 38 and 39 of the judgment which are quoted hereinbelow for ready reference:

“**38.** Regard being had to the aforesaid concept of adverse possession, it is necessary to understand the basic policy underlying the statutes of limitation. The Acts of Limitation fundamentally are principles relating to “repose” or of “peace”. In Halsbury’s Laws of England, 4th Edn., Vol. 28, Para 605 it has been stated thus:

“**605. Policy of the Limitation Acts.-** The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely: (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

These principles have been accepted by this Court keeping in view the statutory provisions of the Indian Limitation Act.

39. The fundamental policy behind limitation is that if a person does not pursue his remedy within the specified time-frame, the right to sue gets extinguished. In the present case the pivotal point is whether a good cause, because a litigant cannot deprive the benefit acquired by another in equity by his own inaction and negligence, as assumed by the plaintiff, has been lost forever as he has not been able to prove the relationship of landlord and tenant in a suit for eviction which includes delivery of possession.”

The right in an aggrieved party to pray for recall of the condonation stands recognized by the judgment of the Supreme Court reported in **(2011)9 SCC 65 (High Court of Judicature of Patna v. Madan Mohan Prasad & ors.)** paragraphs 34 to 39 and **(2003)11 SCC 366 (Commissioner of**



Customs v. Rangi International). The discussions above are sufficient to conclude that the order condoning delay of more than 4 years without hearing the affected respondent-writ petitioner has caused prejudice to him and deserves to be recalled.

In result, the order dated 11.04.2018 passed by a Co-ordinate Bench in condoning the delay of more than 4 years and allowing the interlocutory application filed for the purpose bearing I.A. No. 2481/2017 is recalled and I.A. No. 2481/2017 is restored on the board of the proceeding. It is a natural consequence of the order recalling the order dated 11.4.2018 whereby the delay of more than 4 years was condoned that the admission order dated 26.04.2018 would have to follow suit because unless the delay is condoned, the appeal remains incompetent and can not be admitted. It shall be thus a consequence of our order recalling the condonation order dated 11.04.2018 that the admission order together with interim order contained therein dated 26.04.2018 stands recalled.

I.A. No. 5531/2017 with I.A. No. 5532/2017 are accordingly allowed. Let the appeal together with interlocutory applications filed on behalf of the appellants for condonation of delay as well as for stay be posted for consideration and as requested by Mr. Yadav, let it be listed under the heading “For Orders on Petition” on 20th of August, 2018.”

“21-08-2018 When this matter is listed for consideration on the limitation petition Mr. Raj Ballabh Prasad Yadav, learned AAG-11, prays for time to seek instruction as to whether the State wishes to pursue the appeal because the work in question has since been satisfactorily completed by the respondent- writ petitioner as informed by the Chief Engineer through his letter dated 3.5.2017, a copy of which he has produced in Court.

Mr. Ashish Giri, learned counsel for the respondent- writ petitioner, informs that the said letter is on record.

As prayed, put up this matter on 4th of September, 2018 under the same heading.”



It has been brought on record in the reply to IA No.2481 of 2017 that the Chief Engineer vide Letter dated 3rd of May, 2017 certified that the work has been completed by the respondent-Company satisfactorily and the same is under assessment of the defect liability period as per agreement.

In view of the said letter dated 3rd of May, 2017 the entire exercise now stands concluded and the appeal has become infructuous. The same is consigned to records without prejudice to the rights of the State to proceed in accordance with law with regard to finalization of bills etc.

I.A.No. 2481 of 2017

Having heard learned counsel for the parties and keeping in view the letter dated 3rd of May, 2017 about which reference has been made in the judgment delivered by us today, we condone the delay and treat the appeal to be in time.

The delay condonation application is allowed.

(Amreshwar Pratap Sahi, CJ)

(Jyoti Saran, J)

Surendra/Anjula

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