

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Review No.467 of 2018**

**In**

**Miscellaneous Appeal No.42 of 2010**

M/s Usha International Ltd., having one of its location offices at 6<sup>th</sup> Floor, Alankar Business Center, East Boring Canal Road, Patna through its authorized representative, Shri Saroj Kumar Das, Sales Adm. Head, S/o Late Shatrughan Das, presently R/o 302/C Shree Ganesh Vihar Appt., Nehru Nagar Patna, P.O. & P.S.- Patliputra, District- Patna

... .. Petitioner

Versus

1. The Commissioner Of Commercial Taxes Bihar, Patna
2. The Deputy Commissioner of Commercial Taxes Special Circle, Patna
3. The Commercial Tax Officer Special Circle, Patna

... .. Respondents

with

**Civil Review No. 468 of 2018**

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... .. Petitioner

Versus

1. The Commissioner Of Commercial Taxes Bihar, Patna
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3. The Commercial Tax Officer Special Circle, Patna

... .. Respondents

**Appearance :**

(In Civil Review No. 467 of 2018)

For the Petitioner/s : Mr. Mrigank Mauli, Advocate  
Mrs. Soni Shrivastava, Advocate

For the Opposite Party/s : Mr. Ravi Bhardwaj, Advocate

(In Civil Review No. 468 of 2018)

For the Petitioner/s : Mr. Mrigank Mauli, Advocate  
Mrs. Soni Shrivastava, Advocate

For the Opposite Party/s : Mr. Ravi Bhardwaj, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**



**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 30-01-2019**

Heard Mr. Mrigank Mauli, learned Advocate for the applicants.

These review applications have been filed by a new set of lawyer. The ground for review as disclosed in the application is that the petitioner company had earlier entrusted this case to learned Senior Advocate, Sri L. N. Rastogi and Mr. S. K. Sharan, Mr. Ajay Rastogi, Mr. Manish Rastogi and Ms. Kalpana Rohtagi who were in the office of the Senior Advocate. It is stated that Mr. Ajay Rastogi, learned Advocate who was on record happens to be the son of Mr. L. N. Rastogi, Senior Advocate.

It is the further case of the petitioners that on 16.04.2018 when the matter came up for consideration before this Court, it appears that the same was sought to be withdrawn but the fact is that the petitioners company had no knowledge about listing of the appeal on 16.04.2018 so the question of giving instructions to the Advocates on record or to any other Advocate does not arise.



The review applications further state that only on 02.09.2018 the company official (Mr. V. K. Rungta) checked the status of the case online and he was shocked to see that the appeal has been dismissed as withdrawn, thereafter, he contacted the office of the learned Senior Counsel. At this stage the petitioner company also wrote a letter to the Advocates namely, Sri. L. N. Rastogi, Mr. Ajay Rastogi and other Advocates on record in the case on 17.09.2018, thereafter, the petitioners company was informed by Mr. L. N. Rastogi, Senior Advocate vide his letter dated 20.09.2018 that he had stopped appearing in the case from February, 2017 and at this stage it was informed that he had communicated vide his letter dated 18.02.2017 to the petitioners company that he had discontinued his practice and his son had joined the Government side in the 3<sup>rd</sup> week of July, 2016. It is the case of the review petitioners that the copy of letter dated 18.02.2017 was made available to the petitioners only enclosed with the letter dated 20.09.2018.



It is stated that there is an error apparent on the face of the record as the presence of Mr. Ajay Rastogi shown in the order dated 16.04.2018 is not correct.

We have given an anxious consideration to the submissions of learned counsel representing the petitioners company but were not persuaded to accept the submissions made by the petitioner for the following reasons:-

(i) The review application has been filed by a new set of lawyer who has not followed the views expressed by the Hon'ble Division Bench of this Court in the case of **Rotary Club, Begusarai etc. v. State of Bihar and others** reported in **AIR 2001 Patna 115**. The relevant part of the judgment of the Hon'ble Division Bench reads as under:-

“.....Recourse to review by change of lawyers is normally deprecated by Courts. The practice becomes all the more reprehensible when review is sought on grounds pertaining to the previous conduct of the case or other grounds of fact



normally within the knowledge of the previous lawyer(s). To my mind a lawyer must be very reluctant to take up a brief of review unless he had appeared in the case, the order passed in which is the subject of review. In case for some reasons a change of lawyer is unavoidable, the newly engaged lawyer would owe it to himself and to the profession to have the statement of facts duly verified by the lawyer earlier conducting the case. In case a review is filed by a new lawyer a certificate ought to be appended to the review petition, preferably by the previous counsel, stating that the facts stated in the petition were correct or alternatively by the newly engaged lawyer testifying that he had got the facts stated in the review petition verified by the previous lawyer.....”

(ii) From the narration of facts stated in the review applications, we find that the order of which the review has been sought was passed in presence



of Mr. S.K. Sharan, Advocate, Mr. Ajay Rastogi, Advocate and Ms. Kalpana Rohtagi as also the learned AAG-3. It is not the stand of the petitioners that on 16.04.2018 Mr. Ajay Rastogi was a Government Counsel and/or Mr. S. K. Sharan, Advocate and Ms. Kalpana Rohtagi, the other two learned Advocate confirmed to the petitioner company that they had not appeared on 16.04.2018.

(iii) The letter dated September 17, 2018 is though addressed to Mr. L.N. Rastogi, learned Senior Advocate and others but the dispatch shows that it was sent only to learned Senior Advocate. The response of learned Senior Advocate vide his letter dated 20.09.2018 nowhere states that he had inquired the matter from Mr. Ajay Rastogi and other Advocates whose name appear in the order dated 16.04.2018. There is only one line response which says that he had communicated his inability to conduct the appeals vide letter dated 18.02.2017. Nothing is stated as to how the letter dated 18.02.2017 was dispatched or sent to the petitioners company. It does not talk of any attempt to inquire



as true and correct position from the learned Advocates whose name appear in the order dated 16.04.2018.

(iv) The new set of lawyers never inquired the true and correct facts from the learned Advocates whose name appear in the order of this Court. They have not testified that they have got the facts stated in review petition verified by the previous lawyer.

In the aforementioned facts, we are afraid any leniency in accepting the plea of the petitioner company would not only amount to diluting the view of the earlier Division Bench of this Court, it is also likely to set a bad precedent as any litigant may approach this Court through a new set of lawyer for review of the order making a vague statements that he had not instructed to his Advocate(s) to withdraw the appeal. The sanctity of Court's order is to be preserved.

For the reasons stated above, we are not satisfied with the averments made in the review applications.



The review applications have been preferred with a delay of 140 days. We are not satisfied with the averments made in the review application and those are the very basis of seeking condonation of delay. Thus, the review as well as the interlocutory applications are dismissed.

**(Amreshwar Pratap Sahi, CJ)**

**( Rajeev Ranjan Prasad, J)**

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