

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.139 of 2018

In
Miscellaneous Appeal No.1293 of 2016

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1. Devendra Prasad Son of Baldeo Mahto, Resident of Village/ Mohalla-Hasanganj, Ward No.4, P.O.P.S.- Shekhpura, District- Shekhpura.
 2. Ashish Kumar, Son of Late Deepak Prasad and Grandson of Late Baidyanath Prasad, Resident of Village/Mohalla- Nonmuhiya, Patna, P.O.- Patna, P.S.- Sultanganj, District- Patna-6.

... .. Petitioner/s

Versus

- 1.1. Most. Prem Lata Devi, Widow of late Kedar Nath@ Kedar Ram, Resident of Village/Mohalla- Tarchha, Ward No. 6, P.O. and P.S. and District- Shekhpura.
- 1.2. Anuj Prasad, Son of late Kedar Nath @ Kedar Ram, Resident of Village/Mohalla- Tarchha, Ward No. 6, P.O. and P.S. and District- Shekhpura.
- 1.3. Rakesh Kumar, Son of late Kedar Nath@ Kedar Ram, Resident of Village/Mohalla- Tarchha, Ward No. 6, P.O. and P.S. and District- Shekhpura.
- 1.4. Ranjeet Prasad, Son of late Kedar Nath@ Kedar Ram, Resident of Village/Mohalla- Tarchha, Ward No. 6, P.O. and P.S. and District- Shekhpura.
- 1.5. Sandeep Kumar, Son of late Kedar Nath@ Kedar Ram, Resident of Village/Mohalla- Tarchha, Ward No. 6, P.O. and P.S. and District- Shekhpura.
- 1.6. Manish Kumar, Son of late Kedar Nath@ Kedar Ram, Resident of Village/Mohalla- Tarchha, Ward No. 6, P.O. and P.S. and District- Shekhpura.
- 1.7. Sabita Devi, Wife of Gopal Prasad and D/o Kedar Nath @ Kedar Ram, Resident of Village/Mohalla- Chhoti Delha, P.S. Gaya, District- Gaya.
- 1.8. Sunita Devi, Widow of late Binod Prasad and D/o late Kedar Nath @ Kedar Ram, Resident of Village/Mohalla and P.O. and P.S. and District- Gaya, District- Gaya.
- 1.9. Sangeeta Devi, W/o Sudhir Prasad and D/o Kedar Nath @ Kedar Ram, Resident of Village/Mohalla- Halwar, Bans Road, Pani Hatti, P.S. Bardah, District- Kolkata (West Bengal).
- 1.1 Babita Devi, W/o Bijay Kumar and D/o late Kedar Nath@ Kedar Ram, Resident of Village/Mohalla- Kartashgarh, P.O. and P.S. Kartass, District- Dhanbad(Jharkhand).
- 1.1 Binita Kumari, W/o Arun and and D/o late Kedar Nath@ Kedar Ram, Resident of Village/Mohalla-Ayodhyapuri, Road No. 1, P.o. Chutia, District- Ranchi, Jharkhand.
2. Ajay Ram @ Ajay Kumar, Son of Kedar Nath @ Kedar Ram, Both



Residents of Mohalla- Tarchha, Ward No.6, P.O.P.S.- Shekhpura, District-Shekhpura.

3. Special Officer cum Town Executive Officer, Nagar Parishad, Shekhpura, P.O.P.S.- Shekhpura, District-Shekhpura.
4. The State of Bihar through the Collector, Shekhpura Collectorate Shekhpura, P.O.+ P.S.- Shekhpura, District – Sheikhpura.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Rajendra Prasad, Sr. Advocate. Mr. Pramod Kumar, Advocate. Mr. Ritesh Kumar, Advocate. Mr. Biresh Kumar Sinha, Advocate
For the State	:	Mr.Yogendra Pd. Sinha Aag 7 Mr. Rajeev Kumar Sinha, AC to AAG-7.
For Nagar Parishad	:	Mr. Anil Kumar Saxena
For Respondent Nos. 1&2	:	Mr. Vidya Sagar, Advocate. Mr. Amit Anand, Advocate.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL ORDER

13 18-09-2019

Re.: I.A.No. 3812 of 2018

Petitioners have filed the aforesaid interlocutory application for condonation of delay of 145 days made in filing this review petition with the case that vide order dated 16.11.2017 passed in M.A. No. 1293 of 2016, petitioners were permitted to carry out the work of only plastering and white washing of the construction already raised by them and were restrained from making any further construction over the property in question, but before carrying out plastering and white washing of the construction, the work of underground electrical fittings, sanitary fittings and fixing of door and window are required to be carried out for making the



construction habitable but the requirement of carrying out said work could not be brought in the notice of this Court for the want of knowledge while passing impugned order. While carrying out the aforesaid work opposite parties created hindrance and filed several petitions including the petition under Order 39 Rule 2(a) CPC, so need for filing review petition arose and the aforesaid delay has been caused due to lack of knowledge of the petitioners and aforesaid conduct of the opposite parties in not allowing the petitioners to carry out said work preceding to plastering and whitewashing.

Opposite parties did not file any counter against the aforesaid limitation petition.

Having regard to the facts and circumstances of the case, averment made in the review petition and for the ends of substantial justice, the delay in filing the aforesaid review petition is condoned and the aforesaid I.A. is, accordingly, allowed.

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Heard learned counsel for the petitioners, learned counsel for the opposite parties nos. 1.1 to 1.11 and 2 and learned counsel of State of Bihar on his review petition.

Petitioners have filed the aforesaid petition for review



of order dated dated 16.11.2017 passed in M.A. No. 1293 of 2016 by incorporating carrying out the work of underground electrical fittings, sanitary fittings and fixing of door and window on the threshold and grill already fixed in the constructed portion besides plastering and whitewashing with the case that the said work is required to be carried out to make the building habitable. But the said fact could not be brought in the notice of this Court despite due diligence of the petitioners as petitioners are laymen and are not having any technical knowledge of the building construction work.

Opposite party nos. 1.1 to 1.11 and 2 by filing counter affidavit have opposed the aforesaid review petition submitting that the petitioners have assailed the order of the Court in the garb of review. There is no error apparent on the face of the record in passing the impugned order. Their main intention is either to supplement or supplant a new order giving long rope to them to add further work of construction in place of the previous order which is not permissible in law as well as in any view of the matter, hence this review petition is not maintainable.

Having regard to the facts and circumstances of the case and submission of the parties, it appears that prayer for



carrying out aforesaid work of underground electrical fittings, sanitary fittings and fixing of door and window in the already constructed portion was not made by the learned counsel for the petitioners at the time of passing impugned order perhaps for the want of knowledge. As a layman and not in the field of building construction petitioner is not presumed to have knowledge of carrying out the aforesaid required work in the building preceding to plastering and white washing. As the said work is required to be carried out preceding to plastering and white washing to make the construction habitable, hence the order dated 16.11.2017 passed in M.A. No. 1293 of 2016 by this Court is modified to the extent that besides plastering and white washing of the construction already raised by the petitioners preceding to the passing of the impugned order, they may carry out the work of underground electrical fittings, sanitary fittings and fixing of the door and window in the construction already raised by them.

Accordingly, this review petition is allowed.

(Prakash Chandra Jaiswal, J)

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