

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1232 of 2019**

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Raghav Chaudhary son of Late Banarsi Chaudhary, resident of village-  
Banjari, Police Station- Gopalganj, District- Gopalganj.

... .. Decree Holder-Petitioner

Versus

1. Sri Shambhu Sharan Srivastava son of Late Basudeo Narayan Verma,  
resident of Mohalla- Baluatand, Police Station- Motihari Town, District-  
East Champaran at Motihari. Presently residing at C-24A, 2nd Floor, Ardee  
City, Sector-52, Gurgaon, PIN - 122011.
2. Junior Engineer, Bihar State Housing Board Division-2, Bhootnath Road,  
Police Station- Agamkuan, District- Patna.

... .. Judgment Debtor- Respondents

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**Appearance :**

For the Appellant/s : Ms. Sanjana, Advocate  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 23-08-2019**

The defects, as pointed out by the registry,  
are ignored.

2. Heard learned counsel for the petitioner.

3. This application under Article 227 of the  
Constitution of India has been filed by the petitioner for setting  
aside the order dated 30.11.2018 passed by the learned Sub-  
Judge-1, Gopalganj in Execution Case No.38 of 2018 whereby  
the execution case filed by the petitioner for execution of



judgment dated 26.06.2006 and decree dated 04.07.2006 has been rejected on the ground of limitation.

4. The contention of the petitioner is that after the judgment dated 20.06.2006, the decree was prepared in favour of the petitioner but the defendants did not prefer any appeal against the aforesaid judgment and decree passed in favour of the petitioner. The petitioner kept on waiting for implementation of the aforesaid judgment and decree, but unfortunately the defendant no.1 did not hand over possession of the suit property to the petitioner-decree holder. He also failed to pay the due rent to the petitioner as per direction of the court. Hence, the petitioner filed Execution Case No.38 of 2018 before the learned Sub-Judge-1, Gopalganj on 08.10.2018 along with limitation petition under Section 5 of the Limitation Act for condoning the delay of ninety six days in filing the execution case, but the court below took a hyper technical approach and without going into the merit of the case dismissed the execution case on the ground of delay in filing the case. His contention is that the principle of natural justice entails that the fruit of the decree should be given to the decree holder and denying the same, the court below has acted against the interest of the decree holder.



5. Having heard learned counsel for the petitioner and perused the order impugned, I find that there is no dispute to the fact that the execution case was filed after lapse of twelve years. Article 136 of the Limitation Act, 1963 prescribes limitation of twelve years for filing a suit for execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court. The time from which period begins to run for reckoning the period of limitation is when the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place.

6. As far as Section 5 of the Limitation Act is concerned, the same is not applicable in an application filed under Order 21 of the CPC. Hence, the plea of filing of an application under Section 5 of the Limitation Act for condoning the delay of ninety six days in filing the execution case has been rightly rejected by the court below.

7. Since the execution case filed was barred by law of limitation, no illegality can be found with the impugned order whereby the court below has dismissed the



execution case.

8. The application, being devoid of any merit,  
is dismissed.

**(Ashwani Kumar Singh, J)**

Md. S/-

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