

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1390 of 2018**

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Satyendra Kumar Singh, S/o Late Ram Shewak Singh, Resident of Village-
Mohiuddinpur Bawak, P.s.-Punpun, P.O.-Basuhar, District-Patna.

... .. Petitioner/s

Versus

1. Kunal Singh
2. Raj Kumar Singh Both Sons of Ram Swaroop Singh @ Chamru Singh and Resident of Village-Mohiuddinpur Bawak, P.s.-Punpun, P.O.-Basuhar, District-Patna.
3. Devendra Prasad Singh, Son of Late Ram Dayal Singh, Resident of Chetaul ke Chakiya, P.s.-Masaurhi, Distirct-Patna.
4. Brind Singh
5. Rabindra Prasad Singh
6. Devendra Singh, all 4 to 6 Sons of Late Ram Shewak Singh and Resident of Village-Mohiuddinpur Bawak, P.s.-Punpun, P.O.-Basuhar, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

6 13-01-2023 Heard learned counsel for the petitioner through
Video Conferencing.

2. This Civil Misc. application has been filed for setting aside the order dated 26.06.2018 passed by the Execution Munsif, Patna in Execution Case No. 4 of 2017 by which the execution case of the petitioner was dismissed.

3. The learned counsel for the petitioner submits that the petitioner is decree holder in whose favour the decree was passed in the year 1996 and due to misadvice, the petitioner had



chosen the wrong forum for its execution, so the delay has been caused. The execution petition has been filed on 30.01.2017 in the Court below and also for which he has filed a petition under Section 5 of the Limitation Act. He has further submitted that the petitioner had given the specific reason for delay in application under Section 5 of the Limitation Act that he had filed a case before the Commissioner, Patna which was disposed of in the year 2016 and in the interest of justice and in view of the provision of Section 14 of the Limitation Act, the delay in filing the execution petition ought to have been condoned.

4. In the petition filed under Section 5 of the Limitations Act, a Court has to be satisfied that there was reasonable ground for approaching the court late. The condonation of delay is not a matter of right. It is open to the court to see whether the delay should be condoned. The exercise of discretion must be judicial and not arbitrary. The Court has to exercise the discretion on the facts of each case keeping in mind that in constructing the Expression “sufficient cause” of the principle of advancing substantial justice is of prime importance.

5. The principle of Section 14 of the Limitation Act, 1963 is the protection against the bar of limitation of a person honestly doing his best to get his case tried on merits, but failing



through the Court being unable to give him such a trial. Section 14 provides for exclusion of time spent in proceedings bona fide, in a Court which lacked jurisdiction. The principle underlying the said provision is that limitation will remain in suspense while the litigant was bona fide prosecuting for his rights in a court of justice due to wrong advice. Section 14 of the Limitation Act, 1963 contains a general principle based on justice, equity and good conscience. It is well settled that Exclusion of time is different and cannot be equated with condonation of delay.

6. The Hon'ble Supreme Court in **J. Kumaradasar Nair & Ans. Vs. Iric Sohan & Ors. (Civil Appeal No. 943-944 of 2009)** observed that the provisions contained in Section 5 and 14 of the Limitation Act are meant for grant of relief where a person has committed some mistake. The provisions of Section 5 and 14 of the Limitation Act alike, be applied in a broad-based manner. It is well settled principle of law that mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a Court if it is otherwise vested in law. While exercising the power, the Court will merely consider whether it has the source of exercise such power or not.

7. The Hon'ble Supreme Court in the judgment dated



**22.09.2016 of M/S Suryachakra Power Corporation Limited
Vs. Electricity Department rep. by its Superintending
Engineer, Port Blair & Ors (Civil Appeal No. 5958 of 2015)**

held as follows :-

“7. That the principles under Section 14 of the Limitation Act, 1963 can be applied even when Section 5 of the Act is not applicable, is no more res integra, in view of **M.P. Steel Corporation Vs Commissioner of Central Excise 2015(7)SCC 58**).

8. The two main ingredients required for attracting the principles under Section 14 of the Limitation Act, 1963 are that the party should be prosecuting should be in good faith. It is not enough that one part is satisfied. Both due diligence and good faith must be established.”

8. On perusal of the impugned order, it appears that the learned Court below found that delay of filing execution case was about 21 years and the Court has not satisfied with the reasons given for delay in filing the execution application.

9. It appears from the record that Title Suit No. 9 of 1993 was filed in the Court of Munsif-III, Patna and in that case, the judgment was passed by the trial Court in year 1996. It is stated in the petition that Ram Sewak Singh as a plaintiff had filed the above suit and the present plaintiffs-cum-decree holder had no knowledge about the same and due to mis-advise, the decree holder pursued the matter under Bihar Land Disputes Resolution Act, 2009 which went up to the Court of



Commissioner. However, the petitioner has not annexed the order passed by the Commissioner with this application. There is no material to show that the petitioner was prosecuting the execution of decree in other Court *bona fide* and also there is no sufficient cause shown for condoning the inordinate delay in filing the executing application. The Court below after hearing both the parties passed the impugned order and there is no illegality in the impugned order.

10. For the aforesaid reasons, this Civil Misc. petition is dismissed.

(Sunil Dutta Mishra, J)

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