

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.404 of 2023

Namita Akhauri @ Smt. Namita Akhauri Wife of Akhauri Niranjana, Resident of Mohalla Bahuar Choura, Police Station Vishnupad District-Gaya.

... .. Appellant/s

Versus

1. The State of Bihar Board of Religious Trusts Vidyapati Marg, Patna.
2. Bahuar Chaura Sarvajanik Nyas, Gaya through Baijnath Sharma Son of Late Saryu Sharma Resident of Chand Chaura Police Station Vishnupad District-Gaya Secretary Trust Committee.
3. Smt. Laxmi Devi Wife of Sri Jai Shankar Prasad Resident of Mohalla Chand Choura Police Station Vishnupad District-Gaya.
4. Smt. Babita devi Wife of Amka Raut. Resident of Mohalla Chand Choura Police Station Vishnupad District-Gaya.
5. Smt. Shalini Verma Wife of Manish Kumar Sinha Resident of Mohalla Chand Choura Police Station Vishnupad District-Gaya.
6. Smt. Rakhi Kumari Wife of Sri Ranjit Prasad Resident of Dakhin Darwaja Chand Choura Police Station Vishnupad District-Gaya.
7. Smt. Rakhi Kumari @ Sunita SDinha Daughter of Jay Prakash Narayan, Resident of Dakhin Darwaja Chand Choura Police Station Vishnupad District-Gaya.
8. Smt. Vinita Sinha Wife of Dinesh Kumar, Resident of Near Mangala Guri Mandir, Police Station Vishnupad District Gaya.
9. Smt. Poonam Devi Wife of Uma Shankar Prasad Resident of Near Mangala Guri Mandir, Police Station Vishnupad District Gaya.
10. Smt. Archana Kumari Wife of Sanjay Kumar Resident of Village Bakraur Police Station Bodh Gaya District Gaya
11. Smt. Premlata Sinha Wife of Sri Rajeshwar Resident of Village Kalpa Police Station Jehanabad District-Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pramod Kumar, Advocate
For the Respondent/s : Mr. Ganpati Trivedi, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

6 24-08-2023

Re: I.A. No. 01 of 2023

This interlocutory application has been filed for



condoning the delay of 2397 days i.e. 4 years 6 months and 12 days in filling the present appeal. It is submitted that appellant was not having any knowledge about the impugned judgment as no notice was ever served upon her and the case was decided *ex parte* against opposite party nos. 1 to 10 wherein the appellant is the opposite party no. 2 before the Tribunal. It is further submitted that the learned Tribunal has failed to comply the provision prescribed under law about the notices.

2. Considering the facts and circumstances in this case and averments in this interlocutory application, the specific case of the appellant is that she had no knowledge about the case and no notice was served upon her.

3. It is evident from the judgment itself that the learned Tribunal has held that none of the opposite parties appeared in the case and did not file any show cause. The order speaks about paper publication and appellant being lady states that the newspaper was not widely circulated and therefore, no information was received with regard to the notice by the appellant.

4. Learned counsel for the appellant submits that appellant is the purchaser from the descendants of Saraswati Devi on 23.06.2009 and the appellant got her house built on the



land and since then has been coming in peaceful possession of the suit land and without cancelling of sale deed, the appellant has been declared encroacher upon the Trust's property by the Tribunal.

5. The opposite parties-Trust Board has appeared and raised objection with regard to condonation of delay.

6. Considering the aforesaid facts and circumstances in this case and averments made in this interlocutory application, delay is condoned in filing of Miscellaneous Appeal.

Re: Miscellaneous Appeal No. 404 of 2023

7. Both the parties have agreed to dispose of the matter at this stage without going to the merit of the case. I am of the view that the matter should be heard on merit. The learned Tribunal was clearly unjustified in deciding the Case No. 11 of 2013 without giving proper opportunity to the appellant. As such the order impugned is clearly vitiated due to violation of principle of natural justice.

8. In the facts and circumstances of the case, the impugned order dated 29.09.2016 passed in Case No. 11 of 2013 by the learned Tribunal is set aside and the Tribunal is directed to decide the matter within 6 months from the date of



receipt/production of a copy of the order without granting any unnecessary adjournments.

(Khatim Reza, J)

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