

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.30 of 2015

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Raj Kumar Prasad Son of Shri Radha Krishna Prasad Resident of Mohalla -
Choudharyana Arra, P.S. Ara Town, District - Bhojpur

... .. Appellant

Versus

1. Deo Kumar Prasad Gupta and Ors Son of Radha Krishna Gupta Resident of Mohalla - Choudharyana Arra, P.S. Ara Town, District - Bhojpur
2. Sanjay Kumar Prasad
3. Sushil Kumar @ Santosh Kumar Prasad
4. Sunil Kumar Prasad
5. Anil Kumar Prasad
6. Rakesh Kumar Prasad
7. Rajnish Prasad All are Sons of Shri Radha Krishna Prasad
8. Radha Krishna Prasad Son of Late Dhanraj Sah
9. Shri Mati Sushila Devi Wife of Radha Krishna Prasad All are Resident of Mohalla - Choudharyana Arra, P.S. Ara Town, District - Bhojpur
10. Prabha Devi Wife of Rajesh Kumar resident of village - Anaidh, P.S. Ara Town, District - Bhojpur

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Abhishek Kumar, Advocate
For the Respondent/s : Mr. Aditya Kumar Singh-1, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

15 10-02-2023

I.A. No. 10016 of 2015

This is an application under Section 5 of the limitation Act seeking condonation of delay of 3 years 11 months and 3 days in filing of the instant appeal.

The present appeal has been filed against the final decree dated 10.08.2011 passed by the learned Sub-Judge-II, Ara in Title Suit No. 570 of 2003. This Court has been informed that the preliminary decree dated 18.05.2010 passed by the



learned court in title Suit No. 570 of 2003 is under challenge in this Court vide F.A. No. 160 of 2005. The said appeal was earlier dismissed due to non-compliance with the order dated 23.08.2013 but thereafter it has been restored vide order dated 20.08.2014.

For the purpose of condonation of delay in the present appeal, learned counsel for the appellant submits that the final decree was passed on 10.08.2011 but the learned counsel Mr. Ramadhar Rai, Advocate of Ara Bar Association had not advised the appellant to challenge the final decree. It is further stated that a certified copy of the final decree was obtained on 20.01.2014 but the appeal could be presented only on 20.08.2015.

Learned counsel submits that on 16.08.2015 the appellant visited learned counsel who was representing him in F.A. No. 160 of 2010 in this Court, in course of discussion with the learned counsel regarding the final decree, the appellant told his advocate that the final decree has been passed whereupon he was advised to challenge the same.

Mr. Laxman Lal Pandey, learned counsel representing the appellant has relied upon paragraph '16' of the judgment of the Hon'ble Supreme Court in the case of **Parimal vs. Veena @**



Bharti reported in (2011) 3 SCC 545 to submit that for purpose of condonation of delay while judging as to whether the appellant has been able to show sufficient cause, this Court has to exercise its discretion keeping in view the varied and special circumstances in the case at hand. The Court has to see as to whether the appellant has been able to show 'sufficient cause'. It would be a question of fact. Learned counsel submits that there cannot be a straight jacket formula of universal application as has been held by the Hon'ble Supreme Court in the case of **Parimal** (supra). According to him, the reasons shown for delay in filing of the present appeal are such that those will fall in the category of "sufficient cause", hence the same be condoned.

Learned counsel has further relied upon the judgment of the Hon'ble Apex Court in the case of **Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai** reported in **(2012) 5 SCC 157** (Paragraph 15, 23 and 27) to submit that the expression "sufficient cause" is to be examined in a given case taking note of the bonafide nature of the explanation and in the cases where this Court finds that the cause shown for the delay does not lack bonafides, then it may condone the delay. It is submitted that in the present case, the cause shown are bonafide and the delay of about 4 years have occurred because



the appellant was not given proper advise by learned counsel who conducted the case in the civil court at Ara.

Submissions on behalf of the respondents

Mr. Aditya Narayan Singh, learned counsel for the respondents has strongly opposed this application. A counter affidavit has also been filed on behalf of the respondents. It is submitted that the spacious plea taken by the appellant in the application seeking condonation of delay lacks bona fide. Learned counsel submits that even as the name of a senior advocate at the Bar has been mentioned in the petition seeking condonation of delay saying that he had not advised to file appeal against the final decree but such statements are only bald statements having no sanctity and if such explanations are allowed to be taken, in absence of there being any certificate/opinion of the lawyer, it would be open for any unscrupulous and negligent litigant to upset a settled dispute and a lis would revive even after a long lapse of time.

Learned counsel submits that it is a matter of record that this appellant is contesting the case against his father and the other brothers. The decree has been passed in favour of the father and the other brothers but the appellant does not want them to get the fruits of the decree. An execution case was



levied giving rise to Execution Case No. 10 of 2011 in the learned District Court at Ara, however, all possible measures are being taken by the appellant to circumvent the process of law in the execution proceeding. Filing of the present appeal after almost 4 years is only a step towards such an effort on the part of the appellant.

Learned counsel submits that it is just not believable that a senior counsel of repute in a Civil Court at Ara would not advise the appellant to file an appeal against a final decree. The statements in this regard are only false, fabricated and baseless which need not be given any weightage.

It is further submitted that the First Appeal No.160 of 2010 pending in this Court was dismissed on or about 23.08.2013, thereafter restoration application was filed being MJC No. 688 of 2014 which was allowed on 20.08.2014. The application for restoration was filed on 11.02.2014, therefore, during this period when the appellant had already been in possession of the certified copy of the final decree which he obtained on 20.01.2014, it is difficult to understand he could not discuss it with his advocate. The fact remains that the final decree was prepared on 11.08.2011 itself. According to him, the date setup by the appellant showing that on 16.08.2015 he had



inquired about the case from his lawyer at Patna and in course of discussion with him these things transpired is not believable. These are the mere pretexts for condonation of delay. It is submitted that even the principle of equity demands that something which is settled should not be allowed to be unsettled and a right which has accrued to one of the parties need not be taken away by showing any sympathy in the name of a liberal approach in the matter of condonation of delay.

Learned counsel has relied upon the judgments of the Hon'ble Supreme Court. The first judgment is in the case of **Balwant Singh (Dead) vs. Jagdish Singh and Ors.** reported in **(2010) 8 SCC 685**. Attention of this Court has been drawn towards the observations of the Hon'ble Apex Court in the case of **Perumon Bhagvathy Devaswom vs. Bhargavi Amma** reported in **(2008) 8 SCC 321** (paragraph 9) and in the case of **Ramlal and others vs. Rewa Coalfields Ltd.** reported in **AIR 1962 SC 361** (paragraph-7).

Learned counsel has further relied upon the judgment of the Hon'ble Apex Court in the case of **Government of Maharashtra (Water Resources Department) represented by Execution Engineer vs. M/S Borse Brothers Engineers & Construction Pvt. Ltd.** reported in **(2021) 6 SCC 460**. Learned



counsel submits that the Hon'ble Supreme Court has held on many occasions that law of limitation may harshly affect a particular party but it has to be applied with all its rigours when the statute so prescribes and the court has no power to extend the period of limitation on equitable grounds. It is submitted that the application seeking condonation of delay be dismissed.

Consideration

Having heard learned counsel for the parties and on perusal of the records as also the judicial pronouncements on the subject, this Court finds that admittedly in this case there is a delay of 3 years 11 months and 3 days in filing of the appeal. The appellant has sought to explain the delay on the only ground that after passing of the final decree he had taken advise from Senior civil lawyer Mr. Ramadhar Rai, Advocate of Ara Bar Association but he had not advised to challenge the final decree dated 10.08.2011. Save and except this bald statement made in the name of the learned senior lawyer, there is no material on the record in any form to show that a senior advocate of the Civil Court would advise the litigant not to file an appeal against the final decree. To this Court, the statement without their being any material to support the same would not inspire confidence.



Further it is an admitted position that F.A. No. 160 of 2010 was earlier dismissed due to non-compliance with the order of this Court on or about 23.08.2013. For purpose of restoration of this case, the appellant met his advocate at Patna and filed a restoration application being MJC No. 688 of 2014 on 11.02.2014 which was allowed on 20.08.2014. It is not the case of the appellant that during this period when he met his advocate at Patna nothing was discussed about the final decree. The case of the appellant is that when he inquired about the F.A. No. 160 of 2010 on 16.08.2015 then in course of that discussion the information as to passing of the final decree was given to the learned Advocate who advised him to file the appeal. Again this Court finds that this plea cannot be said to be a bona fide plea inasmuch as it is difficult to believe that the appellant who had according to his own statement discussed the matter about the filing of the appeal with his advocate at Ara after passing of the final decree but did not think it just and proper to discuss the same matter with his advocate at Patna for about 4 years and then one day i.e. on 16.08.2015 he informed this fact to his advocate at Patna.

This Court agrees with the submissions of learned counsel for the respondents that such specious pleas if accepted



at this stage would allow a litigant who is not vigilant in pursuing his remedies to unsettle any settled issue and that would disturb the equity.

So far as the judgments on which reliance has been placed by learned counsel for the appellant is concerned, in the case of **Parimal** (supra), the Hon'ble Supreme Court was considering in the context of an application under Order IX rule 13 CPC as to whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. While applying the said test the Hon'ble Supreme Court observed "...Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application."

In the another case of **Maniben Devraj Shah** (supra) relied upon by learned counsel for the appellant, the Hon'ble Supreme Court was considering as to whether the cause shown by Municipal Corporation of Brihan Mumbai for condonation of 7 years and 108 days' delay in filing appeals against the



judgment and decree was sufficient cause within the meaning of Section 5 of the Limitation Act. The High Court had condoned the delay. Order of the Hon'ble High Court was under challenge before the Hon'ble Supreme Court. The Hon'ble Supreme Court examined the cause shown for delay and ultimately held in paragraph 29 as follows:-

“29. Unfortunately, the learned Single Judge of the High court altogether ignored the gaping holes in the story concocted by the Corporation about misplacement of the papers and total absence of any explanation as to why nobody even bothered to file applications for issue of certified copies of the judgment for more than 7 years. In our considered view, the cause shown by the Corporation for delayed filing of the appeals was, to say the least, wholly unsatisfactory and the reasons assigned by the learned Single Judge for condoning more than 7 years' delay cannot but be treated as poor apology for the exercise of discretion by the Court under Section 5 of the Limitation Act.”

Much reliance has been placed by learned counsel for the appellant on paragraph '23' and '24' of the judgment of the Hon'ble Apex Court in the case of **Maniben Devraj Shah** (supra), therefore, this Court deems it just and proper to reproduce those paragraphs hereunder:-

“23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power



under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

This Court has no difficulty in appreciating the legal propositions flowing from the aforesaid judgments of the Hon’ble Supreme Court. In ultimate analysis, it is the factual matrix of a given case on which would largely depend the bona fide nature of the explanation.

The judgment of the Hon’ble Apex Court in the case of **Balwant Singh** (supra) on which reliance has been placed by learned counsel for the respondents would show that in the said case the Hon’ble Supreme Court categorically held that the law



of limitation may harshly affect a particular party but it has to be applied with all its rigours when the statute so prescribes and the court has no power to extend the period of limitation on equitable grounds. It was held that the discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This Court is further tempted to quote paragraph '9' from the Judgment of **Perumon Bhagvathy Devaswom** (supra) as under:-

“9. This Court also made some observations in *Ram Charan* [AIR 1964 SC 215] about the need to explain, in addition to alleging that the appellant-plaintiff not being aware about the death, the reasons for not knowing about the death within a reasonable time. Those observations have stood diluted in view of the subsequent insertion of sub-rule (5) in Rule 4 and addition of Rule 10-A in Order 22 CPC by Amendment Act 104 of 1976, requiring (i) the court to take note of the ignorance of death as sufficient cause for condonation of delay, (ii) the counsel for the deceased party to inform the court about the death of his client.”

At this stage, the judgment of the Hon'ble Supreme Court in the case of **Ramlal and Ors.** (supra) is required to be taken note of. In the said case, the Hon'ble Supreme Court went on to emphasize that even after sufficient cause has been shown



a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. Paragraph '7' of the Judgment in the case of **Ramlal and Ors.** is being reproduced hereunder for a ready reference:-

“7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chathappan* [(1890) ILR 13 Mad 269] “Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the



way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

Further, in the case of **Balwant Singh** (supra) in paragraph '16' it has been held that the Court must also take into account the conduct of the parties, the bonafide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. Paragraph '16' is, thus, reproduced hereunder:-

"16. Once the proceedings have abated, the suit essentially has to come to an end, except when the abatement is set aside and the legal representatives are ordered to be brought on record by the court of competent jurisdiction in terms of Order 22 Rule 9(3) CPC. Order 22 Rule 9(3) CPC contemplates that the provisions of Section 5 of the Limitation Act, 1963 shall apply to an application filed under sub-rule (2) of Rule 9 of Order 22 CPC. In other words, an application for setting aside the abatement has to be treated on a par and the principles enunciated for condonation of delay under Section 5 of the Limitation Act are to apply in pari materia."

In the case of **M/S Borse Brothers** (supra), the Hon'ble Supreme Court had occasion to review the entire case laws on the subject. The Hon'ble Apex Court once again took



note of the difference between a “good cause” and a “sufficient cause” as held in the case of **Arjun Singh vs. Mohindra Kumar** reported in **AIR 1964 SC 993** and quoted paragraph 10, 11, 12, 13, 14 and 15 from the judgment in the case of **Basawaraj & Another Vs. Special Land Acquisition Officer (2013) 14 SCC 81** which are being reproduced hereunder:-

“10. In *Arjun Singh v. Mohindra Kumar* [AIR 1964 SC 993] this Court explained the difference between a “good cause” and a “sufficient cause” and observed that every “sufficient cause” is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of “sufficient cause”.

11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only *so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned*, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil.



A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England*, Vol. 28, p. 266:

“605. *Policy of the Limitation Acts.*—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property v. SBI Staff Assn.* [(2005) 7 SCC



510] , *Rajender Singh v. Santa Singh* [(1973) 2 SCC 705 : AIR 1973 SC 2537] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)

14. In *P. Ramachandra Rao v. State of Karnataka* [(2002) 4 SCC 578 : 2002 SCC (Cri) 830 : AIR 2002 SC 1856] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93 : AIR 1992 SC 1701] .

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”



Having gone through the judicial pronouncements on the subject when this Court applies the cause shown in the present case to the laws laid down by Hon’ble Supreme Court, this Court is of the considered opinion that the reasons shown are not falling in the category of a “good cause” or a “sufficient cause” as envisaged in the judgments of the Hon’ble Apex Court.

The cause shown is dissatisfactory and lacks bonafide. Interlocutory Application is, thus, dismissed.

As a result of dismissal of the limitation petition, this appeal does not survive.

(Rajeev Ranjan Prasad, J)

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