

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.121 of 2017

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Bihar Sarkar Through Collector, Madhepura representing Bihar Sarkar at &
P.O. and P.S.-Madhepura, District-Madhepura

... .. Appellant

Versus

1. Navin Kumar, son of Dr. Kuleshwar Prasad Yadav.
2. Smt. Komal Kumari, wife of Navin Kumar. Both Resident of Madhepura, Ward No. 6, P.O. and P.S. Madhepura, District Madhepura.
3. Arun Kumar Choudhary, son of Late Gopal Ram Pran Sukha @ Gopal Krishna Choudhary, Resident of Madhepura, Ward No. 7/5/13, P.O. and P.S. Madhepura, District- Madhepura, at present residing at House No. 1289, Sector 14, Faridabad, Haryana.
4. Ratan Kumar Choudhary @ Dhalla, son of Late Gopal Ram Pran Sukha @ Gopal Krishna Choudhary, at present residing at House No. 1761, Sector 16, Faridabad, Haryana.
5. Anjani Kumar Choudhary, son of Late Gopal Ram Pran Sukha @ Gopal Krishna Choudhary, resident of Madhepura, P.S. and P.O. Madhepura, District Madhepura.
6. Smt. Narvada Devi, widow of Late Gopal Ram Pran Sukha @ Gopal Krishna Choudhary, resident of Madhepura, P.S. and P.O. Madhepura, District Madhepura. Both at present residing at House No. 2098 1st Floor, Sector 10, Faridabad, Haryana.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Uday Shankar Sharan Singh, Advocate
For the Respondents	:	Mr. J.S. Arora, Sr. Advocate with
	:	Mr. Manoj Kumar, Advocate
	:	Mr. Kushagra Kush, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

16 31-08-2023

Re: I.A. No. 3939 of 2018

This interlocutory application has been filed on behalf
of the counsel for the appellant under Section 5 of the
Limitation Act for condoning the delay of 4 years, 8 months & 7
days in filing the instant First Appeal.



2. Learned counsel for the appellant submits that one Pragya Prasad, daughter of Late Ramesh Nandan Prasad filed a petition on 08.12.2016 before the Collector, Madhepura with regard to forcibly occupying and constructing over the land of Bihar Government by somebody. Thereafter, the Collector, Madhepura ordered the Additional District Magistrate & Deputy Collector, Land Reforms, Madhepura to make enquiry in the matter and submit the report about forcible encroachment of the Government Land. Further, during the course of enquiry, the enquiry team came to know about the judgment and decree passed in Title Suit No. 178 of 2010. The revenue authorities of the district got knowledge about the judgment under challenge. Thereafter, they wrote a letter to the Government Pleader for obtaining the certified copy of the judgment and decree passed in Title Suit No. 178 of 2010. Further, it is contended that on 06.02.2017, Government Pleader applied for certified copy of judgment and decree of Title Suit No. 178 of 2010 and it became ready on 20.02.2017 and thereafter the State of Bihar got actual knowledge about the content of the judgment passed in Title Suit No. 178 of 2010. After examining the matter, the file was marked by the Collector, Madhepura to Government Pleader for preparation of statement of facts for filing appeal



which was prepared by the Government Pleader, Madhepura and submitted before the Collector for his approval. On 07.04.2017, the Collector, Madhepura gave his approval and ultimately, the file was sent to Revenue Department, Government of Bihar, for taking necessary action for filing of appeal which was received by the Revenue Department on 16.06.2017. It is further submitted that after examining the matter, the file was sent to Law Department on 19.06.2017 for taking proper action for filing appeal, which was received on 20.06.2017. Thereafter, the Law Department examined and the file was returned to the Revenue Department on 21.06.2017 with a note for furnishing certain relevant paper and the file which was received on 22.06.2017 by the Revenue Department. Further, as per the advice of Law Department, the Revenue Department sent a letter to Collector, Madhepura on 23.06.2017 for sending the relevant papers / documents. The relevant paper / documents was received from the Collector, Madhepura. Thereafter, the file was again sent to Law Department on 25.08.2017 for taking necessary action for filing the appeal. Thereafter, the Law Department examined the matter and the file was sent to learned Advocate General on 30.08.2017 for taking necessary steps for filing of the appeal against the



impugned judgment and decree. Ultimately, the First Appeal was filed on 19.09.2017.

3. From the aforesaid facts, it is clear that the Assistant Government Pleader, who was appearing in the suit on behalf of the State of Bihar, did not inform the Collector about the judgment and decree passed in the Title Suit No. 178 of 2010. During the course of enquiry, the District Authority got the knowledge about the judgment and decree passed in the suit on 03.06.2017 due to which some time was consumed in official process and delay was caused in filing of the instant appeal. It is further contended in paragraph 21 of this interlocutory application that the Assistant Government Pleader who appeared in the suit was removed from the panel of AGP of the District.

4. In view of order dated 20.01.2023, the respondents raised a serious objection with regard to the condonation of delay of 4 years 8 months 7 days in filing of the appeal and relied upon several decisions of Hon'ble Apex Court which is mentioned at page 2 of the said order and the matter was adjourned for 24.01.2023. On 24.01.2023, learned Government Pleader prayed for three weeks' time to place on record certain materials with affidavit to support his contention that it was because of the fault on the part of the Assistant Government



Pleader, the present appeal could not be filed within the prescribed period and the delay has taken place because the Office of the Collector, Madhepura remained completely unaware of the judgment and decree under appeal. Thereafter, a supplementary affidavit has been filed on behalf of the appellant in I.A. No. 01 of 2018 which completely changed the stand of the appellant with regard to information of the judgment under appeal. In his supplementary affidavit, learned counsel for the appellant contended that Sri Chandra Kishore Yadav, was the Government Pleader and was representing the State (defendant no. 1) and not the Assistant Government Pleader was appearing in the suit. Due to wrong instruction given by the deponent in paragraph 21 of the I.A. No. 01 of 2018, it has been contended that the Assistant Government Pleader did not furnish the information with regard to disposal of the suit. The Government Pleader, who was conducting the case did not inform about the disposal of the suit and, as such, no action was taken by the District Authority for filing of the appeal. It is specifically argued that from the perusal of the records, it appears that there is a deliberate attempt, which has been made by the then Government Pleader, in helping the plaintiff of the suit. It is also submitted that the then Government Pleader got knowledge that



the Collector, may take action against him due to the laches on his part, he sent to save himself, resignation letter to the Collector, Madhepura on 12.07.2016, which was accepted by the Law Department on 12.08.2016.

5. Considering the aforesaid facts and circumstances, this court is of the view that the appellant has not been able to make out sufficient cause for condonation of delay.

6. Accordingly, I.A. No. 3939 of 2018 is dismissed having no merit in it.

7. Consequent upon dismissal of Limitation Petition (I.A. No. 3939 of 2018), this First Appeal is also dismissed as time barred.

(Khatim Reza, J)

Gaurav Kumar/-

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