

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.120 of 2020
In
Civil Writ Jurisdiction Case No.8423 of 2015

1. The Bihar State Housing Board Bihar.
2. The Bihar State Housing Board Bihar through its Managing Director, office situated in 5 Mangles Road, Patna.
3. The Executive Engineer Division, Patna Division-1, office situated in Bhootnath Road, Bahadurpur Housing Colony, Police Station- Agam Kuan, Patna.
4. The Secretary, Bihar State Housing Board, 5 Mangles Road, Patna.
5. The Revenue Officer, Bihar State Housing Board, Office Situated in 5 Mangles Road, Patna.

... .. Appellant/s

Versus

- 1.1. Mukesh Kumar Sinha
- 1.2. Rakesh Kumar Sinha
- 1.3. Abhishek Kr. Sinha,
2. I.D.B.I. Bank Through its Manager situated in premises of Housing Board, 5 Mangles Road, P.S. Sachivalya, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Pawan Kumar, Advocate Ms. Pratibha, Advocate
For the Respondent/s	:	Mr.Divyam Verma, Advocate Mr. Subodh Kumar, Advocate Mr. Sanjeev Kumar, Advocate Ms. Preeti, Advocate Mr. Ravi Kumar Pandey, Advocate Mr. Ashish Kumar Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-07-2024

Re.: Interlocutory Application No. 2 of 2020

There is 234 days delay in filing the appeal.

2. Having gone through the affidavit filed along with



the application, we find that there are sufficient grounds stated by the appellant to condone the delay.

3. Delay is condoned.

4. I.A. No. 1 of 2023 stands disposed of.

LPA No. 120 of 2020

The appeal has been filed by the Bihar State Housing Board against the order of the learned Single Judge in a writ petition. The writ petition was filed by an allottee of a flat. The allotment was made as early as on 25.10.1984 and the tentative cost of the house shown by the Bihar State Housing Board was Rs. 80,350/-. The flat allotted was not complete and it was under the occupation of a stranger. However, on 02.07.1993, an agreement was entered into with the petitioner and on 10.09.1994 the possession of the flat was handed over to the petitioner.

2. The petitioner kept on reminding the Bihar State Housing Board that the final price of the flat had not been intimated. Later, the petitioner was faced with a recovery notice wherein Rs. 6,41,969.94/- was directed to be paid which included the price and the interest calculated from the date of allotment. The petitioner approached this Court and the learned



Single Judge noticing the fact that there was an arbitration case pending with respect to the very same matter, but however, on another question, permitted the petitioner to raise the question of the price of the flat also before the Arbitrator.

3. Again when the Managing Director of the Bihar State Housing Board issued demand of Rs. 6,41,969.94/-, the petitioner approached this Court. This Court found that the demand of interest from the date of allotment cannot be sustained and also that the further demand for interest would be unsustainable for reason of the price having not been intimated to the petitioner immediately after the allotment, despite various request made by him. We are of the opinion that the petitioner having once approached this Court against the same demand, wherein, and the petitioner was granted liberty to approach the Arbitrator, the learned Single Judge ought not to have considered the matter again in a writ petition under Article 226 of the Constitution of India.

4. The learned Counsel for the appellant also submits that the question was raised before the Arbitrator and while the matter was pending, the petitioner had agreed to a one time settlement. We will not make any observation on the one time settlement or the merits of the matter before the Arbitrator. We



only allow the appeal setting aside the judgment of the learned Single Judge only on the context of the writ petitioner himself having once approached this Court and obtained an order permitting him to raise the question before the Arbitrator. The discretion under Article 226 of the Constitution of India having been once exercised and the matter remitted to the Arbitrator, this Court could not have again revisited the issue by the impugned judgment.

5. The impugned judgment is set aside but leaving open all contentions to be urged before the Arbitrator if the petitioner so desires and even permitting the petitioner to settle it under the one time settlement scheme offered by the appellant.

6. The appeal stands allowed.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

