

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.157 of 2018

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna.
2. The Engineer in Chief (North), Water Resources Department, Sinchai Bhawan, Patna.
3. The Chief Engineer, Water Resources Department, Bhagalpur.
4. The Executive Engineer, Water Resources Department, Flood Control Division, Naugachia, District- Bhagalpur.

... .. Petitioner/s

Versus

Kerns Services Pvt. Ltd. Through its Managing Director, Mr. Mohan Kumar Khandelwal, Son of Sri Durga Prasad Khandelwal, 76, B1/B, Maurya Lok Complex, Dak Bunglow Road, P.S. Kotwali, Patna- 800001, State Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Dr. Shobha Choubey, Ac To Gp 19
For the Respondent/s	:	Mr. Manish Sahay, Advocate
		Mr. Anil Kumar Sinha, Advocate
		Mr. Siddarth Aditya, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

11 23-02-2024

Re: I.A. No. 01 of 2019

This interlocutory application has been filed for condoning the delay of 175 days in filing the Civil Revision Application. Learned counsel for the petitioners submitted that the Reference Case No. 135 of 2013 has been allowed in faovur of opposite party on 7.02.2018. It is submitted that after getting knowledge about the Award passed by learned Arbitration Tribunal, the *pairvikar* of the petitioners filed requisite application for obtaining certified copy of judgment and Award



dated 07.02.2018 on 18.07.2018. The said certified copy of judgment and Award was made available to the petitioners on 23.07.2018. It is submitted that the requisition for obtaining certified copy of judgment and Award dated 07.02.2018 was filed much after expiry of the time required for filing of the Civil Revision application. It is submitted that after obtaining the certified copy of judgment and Award the Executive Engineer sent the file to the panel lawyer for preparation of statement of facts for filing Revision application before this Court. The same was prepared by the lawyer and thereafter Executive Engineer approved the said statement of facts and the records of the file was sent to the Superintending Engineer for his approval. It is submitted that on 17.05.2018 the Superintending Engineer after approving the statement of facts sent the file to Chief Engineer for his approval, the Chief Engineer after approving the statement of facts sent the file on 22.05.2018 to the Joint Secretary (Mechanical) for approving the statement of facts to the Department, which was received by the Department on 28.05.2018. It is further submitted that Water Resource Department after examining the matter on 23.06.2018 sent the file to Law Department, which was received by the Law Department on 25.06.2018. Thereafter the said file was sent to



the learned Advocate General on 02.07.2018. On 04.07.2018 Government Pleader-19 wrote a letter to the concerned authority for furnishing the certified copy of the Award, which was not available in the file. The certified copy of Award was handed over to Government Pleader-19 by the Executive Engineer and thereafter the present Civil Revision application was prepared and affidavited on 13.09.2018. It is further contended that due to fault of Clerk of Government Pleader-19 after affidavited, the present Civil Revision application was filed on 29.10.2018. This delay of about one month has been caused due to fault of Clerk of Government Pleader-19. The delay which has occurred due to aforesaid reason is neither intentional nor deliberate but for the reason of procedural paraphernalia of the concerned office.

2. On the other hand, learned counsel for the opposite party filed his counter affidavit to I.A. No. 01 of 2019. Learned counsel for the opposite party submits that the delay in question was due to movement of files from one table to another. It is further submitted that the petitioners themselves admit that they had received certified copy of said Award on 16.03.2018 but they have annexed copy of the same which was issued in the month of July 2018, which is far from truth. From perusal of first page of impugned Award it appears that the stamp which



was pasted on the said impugned Award on 20.07.2018, meaning thereby that the certified copy of the said award was issued on or after 20.07.2018.

3. Learned counsel for the opposite party further relied upon a decision passed by this Court in case of ***State of Bihar and Ors. Vs. Chitragupta Construction Pvt. Ltd.*** reported in ***BLJ 2023 (4) 161*** wherein this Court has considered the judgment of ***Postmaster General and Ors. Vs. Living Media India Ltd and Anr.*** reported in ***2012 (3) SCC 563***. Learned counsel for the opposite party also relied upon in the case of ***State of Bihar and Ors. Vs. Messers Trimurti Construction*** passed in Civil Revision No. 48 of 2015 *vide* order dated 23.09.2015.

4. Considering the decision of Apex Court as well as this Court, I am of the view that there is no explanation of delay with regard to 07.02.2018 to 18.07.2018 in this petition. The only explanation is from 18.07.2018 up till the date of filing of the Civil Revision application. Even according to the petitioners, they applied requisition of certified copy on 18.07.2018 which was ready and supplied on 23.07.2018. The entire explanation with regard to the lame excuse caused by moving the file before one authority to another. There was



apparent lack of bona fide efforts by the petitioners, who filed the Revision application without any plausible explanation from the date of Award and till the date of filing the requisite application for obtaining certified copy on 18.07.2018. There is no explanation for not applying for the certified copy of the impugned Award dated 07.02.2028 and there was no proper explanatory effort by the petitioners for the delay except the mentioning of various dates and in view of the ratio decided in *Postmaster General Vs. Living Media India Ltd. (Supra)*, the petitioners have miserably failed to give any acceptable and cogent reason sufficient to condone such a huge delay of 175 days.

5. Accordingly, I.A. No. 01 of 2019 is dismissed.

6. Consequently, this Civil Revision application is also dismissed as time barred.

(Khatim Reza, J)

prabhat/-

U			
---	--	--	--

