

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No. 2322 of 2023

In

Miscellaneous Jurisdiction Case No. 4235 of 2014

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Bihar Sarkar through the Collector, Purnia.

... .. Petitioner

Versus

1. Kripa Shankar Jha S/o. Late Ganesh Jha, Resident of Koratbari, Madhubani under Purnia Municipality, Police Station-K-Hat, P.O. and District- Purnia.
2. Smt. Amita Devi W/o. Sri Ganesh Prasad Yadav, Resident of Rajnagar Line Bazar in the Town of Purnia, Police Station-K-Hat, P.O. & District- Purnia.
3. Sushri Puja Suman Daughter of Dr. Indra Narain, Nos Resident of Village-Kalaiyamab, Police Station - Pipra, District-Supaul, at present residing at Line Bazar, Police Station -K-Hat, P.O. and District- Purnia.
4. Sushri Nithi Aakarnsha Daughter of Dr. Indra Narain, Nos Resident of Village-Kalaiyamab, Police Station - Pipra, District-Supaul, at present residing at Line Bazar, Police Station -K-Hat, P.O. and District- Purnia.
5. Aditya Aakash Son of Dr. Indra Narain, Resident of Village-Kalaiyamab, Police Station - Pipra, District-Supaul, at present residing at Line Bazar, Police Station -K-Hat, P.O. and District- Purnia.
6. Dr. Indra Narain Son of Jagdish Mandal, Resident of Village-Katiya Kata, Police Station-Pipra, District-Supaul, at present residing at Line Bazar, Police Station -K-Hat, Post and District- Purnia.

... .. Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Anil Kumar Jha, Sr. Adv.
Mr. Sanat Kumar Mishra, Adv.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 11-01-2024

Ref.:- I.A. No. 1 of 2023

The present interlocutory application has been filed for
condonation of delay of 872 days (excluding the Covid-19



period) in filing the connected restoration petition, seeking restoration of an earlier restoration petition bearing MJC No. 4235 of 2014 (arising out of Second Appeal No. 107 of 2014).

2. The present case has a chequered history, which would be apparent from the facts being narrated hereinbelow. A Title suit bearing Title Suit No. 369 of 2000 was filed by the petitioner herein, however, the same was dismissed by a judgment dated 20.8.2009 and decree dated 24.8.2009, passed by the Ld. Senior Civil Judge Vth, Purnea, which was then challenged by the petitioner herein, by filing an appeal bearing Title Appeal No. 58 of 2009, nonetheless, the same has also stood dismissed by a judgment dt. 24.5.2013 & decree in appeal dt. 06.6.2013, passed by the 1st Additional District Judge, Purnea. The petitioner had then filed the connected second appeal bearing Second Appeal No. 107 of 2014, after a delay of about 247 days.

3. The Lawazima Board, by an order dated 23.07.2014, passed in Second Appeal No. 107 of 2014, had granted four weeks' time for removal of the defects including payment of the Court fees, however, the defects were not removed, whereafter the aforesaid second appeal was listed before a coordinate Bench of this Court on 15.09.2014 and it was observed that in spite of order dated 23.07.2014, passed by the Lawazima Board,



the defects, as pointed out by the office, have not been removed, nonetheless, three weeks' peremptory time was granted to the appellant i.e. the petitioner herein to remove the defects, however, the defects were not removed within the peremptory time, granted by a coordinate Bench of this Court, vide order dated 15.09.2014, leading to dismissal of the second appeal on 08.10.2014. The petitioner herein had then filed a restoration petition bearing MJC No. 4235 of 2014, which was heard on 06.04.2016 and was allowed, however, subject to removal of defects, as pointed out by the registry in Second Appeal No. 107 of 2014, within a period of two weeks and further subject to deposit of a cost of Rs. 250/- with the Patna High Court, Legal Services Committee and filing receipt thereof within ten days. However, on account of non-compliance of the aforesaid peremptory order dated 06.04.2016, the second appeal could not be restored, resulting in status of the second appeal, as having been dismissed for default on 8.10.2014, remaining intact.

4. Now, a second restoration petition has been filed bearing MJC No. 2322 of 2023, inter alia, praying therein for restoration of the earlier restoration petition bearing MJC No. 4235 of 2014.

5. The learned Senior Counsel for the petitioner has



submitted that sufficient cause has been shown so as to warrant restoration of the restoration petition as would be apparent from the averments made in the interlocutory application in question, hence the aforesaid restoration petition bearing MJC No. 4235 of 2014 be restored to its original file.

6. I have heard the learned Senior Counsel for the petitioner and perused the materials on record.

7. Section 5 of the Limitation Act, 1963, provides for extension of prescribed time for filing an application under any provision except Order XXI of the Code of Civil Procedure, 1908, thereby giving powers to the Court to admit the application by condoning the delay, after the prescribed period of limitation if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. Thus, it is clear that the phrase “sufficient cause” is a necessary condition for extension of the prescribed period of limitation. It may be relevant to reproduce Section 5 of The Limitation Act, 1963, herein below:-

“Section 5:- Extension of prescribed period in certain cases. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the



prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

8. In the instant application, the petitioner has merely stated that an order dated 06.04.2016 was passed in MJC No. 4235 of 2014, granting two weeks’ time to the petitioner to remove the defects in Second Appeal No. 107 of 2014 and deposit a cost of Rs. 250/- with the Patna High Court, Legal Services Committee, within ten days, however, the same could not be complied with, resulting in dismissal of the contempt petition, nonetheless, the aforesaid fact was not informed to the petitioner, however, the petitioner came to know about dismissal of the second appeal, after the Respondents had filed a writ petition bearing CWJC No. 17827 of 2022, seeking a direction upon the Respondents therein to grant permission to sell the land in question, whereafter the present restoration petition has been filed.

9. This Court finds that the aforesaid plea taken in the present application is not sufficient to explain the phenomenal delay of 872 days, which has taken place in filing the connected



restoration petition, inasmuch as both the second appeal as well as the earlier restoration petition had been filed by a duly appointed counsel, hence, it was incumbent upon the petitioner to have remained in contact with his counsel and vice-a-versa, thus, such a lame excuse, as aforesaid, is ill-founded and not acceptable. It is a well settled principle that the Government is under a special obligation to perform duties with full diligence and commitment and the term “sufficient cause” as used in Section 5 of the Limitation Act, 1963, cannot be construed liberally, merely because the parties are the instrumentality of the Government. Reference, in this regard, be had to the judgment, rendered by the Hon’ble Apex Court in the case of ***Postmaster General & Others vs. Living Media India Ltd. & Anr.***, reported (2012) 3 SCC 563.

10. Having perused the materials on record, this Court is of the view that the petitioner never had any intention to pursue the matter seriously and has been lacking all throughout as also the situation as the present one can only be termed as non-serious attitude on the part of the petitioner, thus, delay of 872 days in filing the connected restoration petition cannot be termed to be a reasonable delay in any manner and the averments made in the present application also do not depict that sufficient cause has



been shown so as to condone the delay of 872 days.

11. Yet another aspect of the matter is that the petitioner has prayed for restoration of an earlier restoration petition bearing MJC No. 4235 of 2014, which, in the opinion of this Court, is no longer in being and in fact has worked out its force with the passing of the order dated 06.04.2016 and non-compliance thereof, resulting in the aforesaid second appeal remaining dismissed, leading to revival of the same status of the aforesaid second appeal as was existing on 08.10.2014, the day on which the second appeal had stood dismissed for default, thus, the present petition, filed for restoring the earlier restoration petition, is even otherwise not maintainable inasmuch as no prayer has been made for restoration of the second appeal itself, especially in terms of the provisions, contained in The Code Of Civil Procedure, 1908.

12. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court does not find any cogent reason to condone the inordinate delay of 872 days (excluding the Covid-19 period) in filing the connected restoration petition.

13. Accordingly, the instant interlocutory application, stands dismissed, being devoid of any merit.



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14. In view of the fact that the application for condonation of delay has already stood dismissed, as aforesaid, the present petition seeking restoration of the earlier restoration petition is bound to fall apart from the fact that the same is also not maintainable, as has been delved at length in the preceding paragraphs, hence is accordingly dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.02.2024
Transmission Date	NA

