

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.485 of 2017

1. The State Of Bihar through the Collector, Kaimur, Bhabhua
2. The Circle Officer, Durgawati, Kaimur, Bhabhua

... .. Appellant/s

Versus

1. Triloki Pandey Son of late Damodar Pandey
2. Ranju Kuer, Ramjee Kuar, Wife of Late Damodar Pandey Both Resident of Village-Nuon, P.S. Durgawati, Dist. Kaimur, Bhabhua
3. Kiran Devi, Dugther of Late Damodar Pandey, Wife of Ramesh Tiwari, Resident of Village-Badhari, P.O. and P.S. Jamaniya, District Gajipur, Uttar Pradesh.
4. Kanchan Devi Daughter of Damodar Pandey, Wife of Niranjana Chaubey, Resident of Village-Dahiaon, P.O. and P.S. Durgawari, District kaimur, Bhabhua.
5. The Mukhiya, Gram Panchayat Nuon, P.O. and P.S. Durgawari, District Kaimur, Bhabhua

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Uday Shankar Pandey
For the Respondent/s : Mr. Parth Gaurav

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

16 19-01-2024

I have already heard the learned counsel for the appellant/the State of Bihar as well the learned counsel for the respondents on I.A.No.6964 of 2017, filed under Section 5 of the Limitation Act for condonation of delay in preferring this second appeal.

2. This appeal has been filed against the judgment dated 16.12.2016 and the decree dated 23.12.2016 in Title Appeal No. 05 of 2014 passed by the learned Additional District



Judge-V, Kaimur, Bhabua, affirming the judgment and decree dated 26.11.2013 and 05.12.2013 passed by the Munsif, Kaimur, Bhabhua in Title Suit No. 220 of 2005.

3. The limitation petition (I.A.No.6964 of 2017) was filed on 18.09.2017 for condonation of delay, but the period of delay has not been mentioned in the said application. In that application, it has been mentioned that the appellant/State of Bihar made deliberation in the Department of Law whether the appeal should be filed or not, and in obtaining the legal opinion, a lot of time was consumed. Finally, the file came to the office of the Advocate General after endorsement of the Law Department on 07.07.2017. Thereafter, the file was endorsed to the G.A.7 for filing of the present second appeal and hence the present appeal is being filed with some delay.

4. Thereafter, the appellant sought time for filing supplementary affidavit to the above-mentioned interlocutory application and vide order dated 03.04.2023, the permission was granted by this Court to file a supplementary affidavit. Accordingly, the first supplementary affidavit was filed. In paragraph-2 of that supplementary affidavit, it was disclosed that there is a delay of 159 days in preferring the memo of appeal. It has been mentioned in the supplementary affidavit



that immediately on 23.12.2016, the office of the learned AGP applied for obtaining certified copy of the title suit's judgment dated 26.11.2013, along with title appeal's judgment dated 16.12.2016. On 02.03.2017 only, the certified copy of the title suit judgment was made available and received, but due to certain technical issue, the certified copy of the judgment dated 16.12.2016 of the first appellate court could not be made available. That on 07.07.2017, the file was endorsed to the Law Department for taking appropriate steps and for ensuring the filing of the appeal and thereafter the file was sent to the office of the learned G.A.7 for ensuring the filing of the appeal. The office of the G.A.7 raised objection regarding non-availability of the certified copy of the judgment dated 16.12.2016 passed in Title Appeal No. 05 of 2014. The memo of appeal was filed without annexing the certified copy of the judgment dated 16.12.2016 passed in Title Appeal No. 05 of 2014. It has been mentioned in the interlocutory application that the delay was caused due to procedural formalities which is not intentional and deliberate.

5. The appellant was again provided an opportunity to file a second supplementary affidavit at the cost of Rs.5000/-, vide order dated 12.07.2023. In the second supplementary



affidavit, it has been mentioned that immediately after receipt of the certified copy of the judgment and decree of Title Appeal No. 05 of 2014, the certified copy was filed on 21.10.2022. It has been mentioned that due to village politics as well as communication gap between the *Mukhiya* and local authorities, the delay has been caused in filing of the certified copy. One of the reasons of delay is also mentioned as Covid-19 pandemic.

6. The learned counsel for the appellant submitted that there is a delay of 159 days in preferring the appeal and this delay is not intentional or deliberate, rather it was due to procedural formalities as well as due to movement of the file from one department to other and soon after the receipt of the certified copy of the judgment and decree of the first appellate court, it was filed on 21.10.2022. In support of his submission, he relied upon a decision of Hon'ble the Supreme Court passed in Civil Appeal No. 5867 of 2015 and submitted that the Hon'ble Apex Court had condoned the delay of around 479 days in presentation of the appeal. He also relied upon a decision of Hon'ble Apex Court, *reported in 2015 (2) PLJR (SC) 195, Executive Officer, Antiyur Town Vs. G.Arumugam (D)* and submitted that taking a lenient view, the Hon'ble Apex Court has been pleased to condone the delay of 1373 days in filing the



second appeal. He has submitted further that the Hon'ble Apex Court in case of *Sate of Nagaland Vs. Lipok AO and others* (2005) 3 SCC 752 held that the court must take a justice-oriented approach while considering an application for condonation of delay.

7. On the other hand, the learned counsel for the respondents submitted that there is not only delay of 159 days, but there is a delay of 03 years, 07 months and 21 days in preferring the appeal and there is no prayer for condonation of delay of 03 years, 07 months and 21 days, rather a petition has been filed for condonation of delay of 159 days. He further submitted that, as per the provision of Order XLI, Rule 1 of the Code of Civil Procedure (hereinafter to be referred to as 'the Code'), the copy of the judgment is mandatorily required to be filed with memo of appeal and without filing the copy of the judgment, the appeal so filed is incompetent. The office has rightly pointed out that the delay is 03 years, 07 months and 21 days after deducting the period condoned by Hon'ble Supreme Court vide general order, to which the learned counsel for the appellant replied that may it be delay of 159 days or that of 03 years, 07 months and 21 days, it is not wilful or deliberate, but due to procedural delay occurred in movement of file at various



stages in the different departments of the Government.

8. The learned counsel for the respondents has submitted that the application for certified copy was filed after much delay without giving cogent and sufficient reason for filing the same. The learned counsel relied upon a decision of Hon'ble Supreme Court, reported in *(2014) 2 SCC, page 422, State of UP through Executive Engineer and Another Vs. Amar Nath Yadav* and submitted that a similar plea was taken by the appellant in that case. In that case also, there was a plea that the delay was caused in movement of file from one department to another one, but the Hon'ble Supreme Court rejected the plea and did not condone the delay even of 481 days. Paragraph nos. 2 and 3 of the above-noted judgment are extracted hereinbelow:

“2. This Court in Postmaster General v. Living Media India Ltd. Has deprecated such practices on the part of the government authorities/departments in the following words: (SCC pp. 573-74, paras 27-30)

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the



Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are



under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

3. We further find that in identical circumstances in similar type of case which also arose against the award of the Labour Court, upheld by the High Court, this court had refused to condone the delay and dismissed the special leave petition on that ground. That was CC No. 5368 of 2013 titled State of U.P. Vs. Hanuman which was dismissed on 11.03.2013. We had summoned the file of that case and find that both the case are almost similar. Therefore, there is no reason to take a different view. We thus dismissed this SLP on the ground of delay.”

9. There is unexplainable delay of 03 years, 07



months and 21 days in preferring this second appeal. The cause of delay has not been sufficiently explained.

10.. Accordingly, I.A.No.6964 of 2017 filed under Section 5 of the limitation Act is rejected.

11. Consequently, this second appeal is dismissed on the point of limitation.

(Nawneet Kumar Pandey, J)

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