

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.367 of 2022

In
Civil Writ Jurisdiction Case No.16616 of 2008

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1. The State of Bihar through the Commissioner cum Secretary, Road Construction Department Government of Bihar, Patna.
 2. The Additional Secretary, Road Construction Department, Government of Bihar, Patna.
 3. The Chief Engineer, Central Design Organization, Road Construction Department, Bihar, Patna.
 4. The Under Secretary, Road Construction Department, Bihar, Patna.
 5. The Deputy Secretary, Road Construction Department, Bihar, Patna.
 6. The Secretary, Department of Finance, Govt. of Bihar, Patna.
 7. The Under Secretary, Personal Claim Cell, Department of finance, Govt. of Bihar, Patna.
 8. The Executive Engineer, Road Constructions Divisions, Buxar, Patna.

... .. Appellant/s

Versus

1. Smt. Sumitra Devi wife of Late Tapeswar Sinha, resident of village - Ghoraughan, P.S. - Masaurhi, Dist. - Patna.
2. Smt. Kanchan Kumari daughter of Late Tapeswar Sinha, wife of Shri Dhananjay Kumar, resident of village - Mobarakpur, P.S. - Shabpur, Patna.
3. Smt. Chanchala Kumari (Married) daughter of Late Tapeswar Sinha, wife of Sri Prakash, resident of 19, M Type Old Adityapur, P.S. - Adityapur, Saraikela, Tola - Nagar, District - Saraikela (Jharkhand).
4. Rajeshwar Prasad Singh son of Late Tapeswar Sinha, resident of village - Ghoraughan, P.S. - Massaurhi, Dist- Patna at present living at R.L. Vatika, Flat No. 202 B, Dwarikanath Lane, Salimpur Ahra, Gali. no. 3, Patna.
5. Shri Raju Kumar son of Tapeswar Sinha, resident of village - Ghoraughan, P.S. Massaurhi, Dist- Patna at present living at R.L. Vatika, Flat No. 202 B, Dwarika Nath Lane, Salimpur Ahra, Gali No. 3 , Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sanjay Kumar Ghosarvey (A.C. To A.A.G.13)
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA



ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

5 20-01-2025 Appellant – State have assailed the order of the learned Single Judge dated 28.01.2019, passed in CWJC No. 16616 of 2008. There is a delay of about 3 years and 27 days. In this regard, I.A. No. 01 of 2022 has been filed for condonation of delay. State has contended as under:-

“2. That the order was passed in the writ application on 28.01.2019 and thereafter after pronouncement of the order the file was received along with order to the office of Director, Reforms Mission on 08.04.2019 for further action in the case.

3. That it is relevant to submit here that file was travelled at various level of the authorities which includes opinion of the Finance department and other department and finally decision was taken to take the opinion from the Law Department on 26.11.2019. The Law department sent the file to the office of learned Advocate General and opinion dated 18.06.2020 was given in the file for filing LPA before this Hon’ble Court and the file was sent to the Law department on 29.06.2020. File was received in the Road Construction Department and the same was approved on 05.11.2020. The file was again sent to the Law department for filing LPA on 10.11.2020 and accordingly the file was sent to the office of learned Advocate General on 11.03.2022. The file was received in the office of learned Additional Advocate General-3 for preparation of draft of LPA, Stay petition and Limitation petition. Due to Lock down and Pandemic Covid-19, the file remained in the High Court.

4. That it is further respectfully



submitted that for preparation of memo of appeal, some of the papers were required which was lying in the office of other aw officer which was given on 21.03.2022 thereafter the case was preceded and draft was prepared and vetted by the learned AAG-3 but in the meantime annual vacation intervened thereafter the case could not be filed.”

2. The cause of action accrued to the State-appellant on 27.02.2019. There is no proper explanation till commencement of COVID-19 period on 20.03.2020, i.e., almost 1 year and 2 months. Further, COVID-19 disappeared in the month of January of 2022 and the present LPA was filed on 26.07.2022. Resultantly, there is no explanation for the first and second spell narrated (supra).

3. The Hon’ble supreme court decision in the case of ***Miscellaneous Application No. 21 of 2022 in Suo Motu Writ Petition (Civil) No. 3 of 2020, In Re: Cognizance for extension of limitation*** elaborately considered as to how to overcome the limitation during the covid-19 period. Beyond the COVID period is required to taken into consideration for the purpose of condonation of delay and in accordance with law. Reading of Para 2 to 4 of the I.A. No. 01 of 2022 for condonation of delay it is as usual file was passing from one department to another department or section to another section. Recently, Hon’ble



Supreme Court in the following decisions deprecated in filing belated litigation on behalf of the State while imposing of cost in the case of **State of Madhya Pradesh vs. Ramkumar Choudhary** decided in [SLP (C) Diary No. 48636 of 2024] on November 29, 2024 read with **H. Guruswamy & Ors. vs. A. Krishnaiah** reported in **2025 SCC OnLine SC 54**, in Para 13 to 17 which reads as under:-

“13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the



approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."

4. In the light of these facts and circumstances, the appellant has not made out a case so as to condone the delay of 3 years and 27 days in filing LPA No. 367 of 2022. Resultantly, I.A. No. 01 of 2022 stands dismissed.



5. Consequently, the present LPA No. 367 of 2022 is
dismissed.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

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