

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.117 of 2017

In
Civil Writ Jurisdiction Case No.11326 of 2013

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1. The Municipal Commissioner, Patna Municipal Corporation, Patna.
 2. The Estate Officer (Planning and Development), Patna Municipal Corporation, Patna.

... .. Appellants.

Versus

1. Amitesh Kumar, son of Late Nagendra Kumar Prasad, Resident of Mohalla-Jakkanpur, Near Shiv Mandir, Jakkanpur, District-Patna.
2. The State of Bihar.
3. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
4. The Collector, Patna.
5. The Sub Registrar, District Registration Office, Patna.

... .. Respondents.

Appearance :

For the Appellants	:	Mr. Prasoon Sinha, Senior Advocate.
		Mr. Prabhat Kumar, Advocate.
For the Respondent No.1:		Mr. Satish Chandra Jha, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 04-02-2025

I.A. No.5280 of 2018:

Heard I.A. No.5280 of 2018 for condonation of a delay of about 310 days in filing the present L.P.A. No.117 of 2017.

2. The reasons narrated for condonation of delay in paragraphs-3 to 7 of I.A. No.5280 of 2018 are read as under:

“3. That the writ petition was allowed by the order dated 15.02.2016. In the 1st week of March, 2016 the order was



conveyed to the concerned authorities of PMC i.e. the then Estate Officer. After due deliberation the file was sent back for opinion to the conducting lawyer on 20-May-2016. The conducting lawyer was out of Patna during summer vacation and he came back on 20th of June, 2016 and thereafter he himself discussed the matter with the then Commissioner of Patna Municipal Corporation as well as the Estate Officer on 25th of June, 2016 and suggested to make available some documents relevant for filing LPA.

4. That as some of the required documents could be traced out only in the 1st week of October, 2016 which was made available to the counsel concerned. Thereafter, the court was closed of Puja Holidays from 7th to 16th of October and during that period the counsel was not available in Patna therefore the draft of the LPA was prepared and sent for vetting on 19th of October, 2016.
5. That finally draft of the memorandum of appeal was sent to the concerned counsel on 27 October-2016.
6. That the Vakalatnama duly executed by the appellants and the certified copies of



the order impugned were not available in the file therefore on 8th of November-2016 i.e. after Dipawali and Chhath Puja Holidays the same was directed to be furnished.

7. That finally after obtaining the certified copies of the impugned order on 17.01.2018 the affidavit was sworn by the appellant no.2 and thereafter the LPA was filed on 20.01.2017.”

3. The aforementioned reasons are not sufficient to condone the delay. The reasons are very casual in view of the fact that they have taken note of two vacations of the Court in October and Dipawali and Chhath Puja in November. That apart, for the first time, they noticed that certified copy of the impugned order was not available in the file, in the year 2018. In fact, there is error in paragraph-7 (cited supra) insofar as citing the impugned order.

4. In view of these facts and circumstances and the fact that the appellants are Patna Municipal Corporation and they are well aware about the limitation period insofar as assailing the learned Single Judge order in filing L.P.A. within 30 days from the date of Judgment. Recently, the Hon’ble Supreme Court 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** have laid down the principles in paragraphs-13 to 17 under what circumstances litigation are to be dismissed on the ground of delay. Paragraphs-13 to 17 are read 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."



5. Taking note of the aforementioned principles, the appellants have not made out a case so as to condone the delay of 310 days in filing L.P.A. No.117 of 2017. Accordingly, I.A. No.5280 of 2018 stands dismissed.

L.P.A. No.117 of 2017:

6. Resultantly, L.P.A. No.117 of 2017 stands dismissed.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

P.S./-

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