

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No. 150 of 2017

Chhathu Sah Gond @ Chhathu Sah Son of Late Bhoj Sah Gor, Resident of
Mohalla- Baswaria Bettiah Town, P.O and P.S- Bettiah Town, District- West
Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector West Champaran at Bettiah P.O & P.S-Bettiah, District- West Champaran
2. The District Fishery Officer, West Champaran at Bettiah, P.O. and P.S.- Bettiah, District- West Cha
3. The Anchal Adhikari Bettiah, P.O. and P.S.- Bettiah, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Anis Akhtar, Advocate Mr. Noumaan Ahmad, Advocate Mr. Daula Siddiqui, Advocate Mr. Mahtab Alam, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, GA -2
For the State	:	Mr. Ranjan Prakash, AC to GA-2

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

CAV ORDER

9 10-02-2026 Heard learned Counsel for the petitioner as well as
learned Counsel for the respondent.

2. This present civil revision has been filed by the petitioner under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) assailing the order dated 06.07.2017 passed in Miscellaneous Case No. 11 of 2016 by the learned Additional District and Sessions Judge-V, Bettiah, District West Champaran (hereinafter referred to as ‘Trial Court’), whereby the petition dated 06.07.2017 filed by the



plaintiff/appellant/petitioner for permitting deposit of cost of Rs.5,000/-, as directed earlier by order dated 21.01.2017 while restoring Title Appeal No. 12 of 2013, has been rejected solely on the ground of delay and laches.

3. The genesis of the case giving rise to the present civil revision, in brief, are that the petitioner instituted Title Suit No. 7 of 2005 before the Court of Sub-Judge, Bettiah, District-West Champaran seeking declaration of title, confirmation of possession and permanent injunction with respect to the suit land, which came to be dismissed on contest by judgment and decree dated 31.01.2013. Aggrieved thereby, the petitioner preferred Title Appeal No. 12 of 2013, which was admitted and later transferred to the learned Trial Court. However, the appeal was dismissed for default on 22.09.2016 due to non-prosecution. Subsequently, on an application filed under Order XLI Rule 19 read with Section 151 of the CPC, registered as Miscellaneous Case No. 11 of 2016, the appeal was restored by order dated 21.01.2017 subject to payment of cost of Rs.5,000/- within three weeks. Since the said cost could not be deposited within the stipulated time, the petitioner filed a petition dated 06.07.2017 seeking permission to deposit the cost, which was rejected by the learned Trial Court on the same date *vide* the



impugned order solely on the ground of delay and laches in depositing the cost of Rs.5000/-.

4. Aggrieved by the impugned order dated 06.07.2017 whereby the learned Trial Court rejected the prayer of the petitioner herein for permitting deposit of the aforementioned cost amount solely on the ground of delay and laches, the petitioner has invoked the revisional jurisdiction of this Court under Section 115 of the CPC, seeking setting aside of the impugned order.

5. Learned counsel for the petitioner submitted that the impugned order dated 06.07.2017 is manifestly illegal, arbitrary and suffers from material irregularity in exercise of jurisdiction, inasmuch as the learned Trial Court failed to appreciate both the factual matrix and the settled principles of law governing restoration of proceedings. It is submitted that the Title Appeal No. 12 of 2013 had already been restored by a reasoned order dated 21.01.2017 passed in Miscellaneous Case No. 11 of 2016, and the direction to deposit cost of Rs.5,000/- within three weeks was merely a conditional order, non-compliance whereof was neither willful nor deliberate.

5.i. Learned counsel for the petitioner further submitted that despite the inadvertent delay in deposit of cost,



the petitioner was diligently prosecuting the appeal and necessary *pairvi* was continuously made, which is evident from the order sheets of the learned Trial Court. It is further submitted that the learned Trial Court, instead of adopting a liberal and justice-oriented approach, rejected the petitioner's prayer on a hyper-technical ground of delay and laches, ignoring that procedural prescriptions are handmaids of justice and not meant to defeat substantive rights.

5.ii. Moreover, learned counsel for petitioner submitted that position of law is well settled that courts should ordinarily lean in favour of adjudication on merits rather than dismissal on technicalities. He lastly submitted that the impugned order resulted to failure to exercise jurisdiction vested in the learned Trial Court and has resulted in serious prejudice to the petitioner, warranting interference by this Court in exercise of its revisional jurisdiction under Section 115 of the CPC.

6. *Per contra*, learned counsel for the State supported the impugned order and submitted that the impugned order does not call for any interference by this Court in revisional jurisdiction. It is submitted that the order dated 21.01.2017 restoring the appeal was conditional in nature and the petitioner



having failed to comply with the condition of depositing the cost of Rs.5,000/- within the stipulated period, the learned Trial Court was justified in rejecting the subsequent petition on the ground of delay and laches. Learned counsel further submitted that no sufficient or cogent explanation was offered by the petitioner for non-compliance of the said order within time and, therefore, no jurisdictional error or material irregularity can be said to have been committed by the learned Trial Court in passing the impugned order. Hence, the interference of this Court is not warranted.

7. Having considered the rival submissions advanced on behalf of the parties and have perused the materials available on record, including the impugned order and the order sheets of the learned Trial Court. The issue that arises for consideration in the present revision is *“whether the learned Trial Court committed a jurisdictional error or material irregularity in rejecting the petitioner’s prayer for permitting deposit of cost solely on the ground of delay and laches, despite the fact that the appeal had already been restored and was being diligently pursued by the petitioner?”*

8. At this stage, before advertent to the merits of the rival submissions, it would be apposite to notice the scope of



interference by this Court under Section 115 of the CPC. The revisional jurisdiction of this Court is confined to examining whether the Trial Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. In the present case, this Court is not called upon to re-appreciate the facts or substitute its own discretion for that of the learned Trial Court, but to examine whether the learned Trial Court, while rejecting the prayer of the petitioner for permitting deposit of cost, has adopted an unduly technical approach resulting in failure to exercise the jurisdiction vested in it and thereby caused miscarriage of justice. Where an order is passed ignoring relevant facts, settled principles of law and the object of adjudication on merits, such order falls within the ambit of “material irregularity” warranting interference under Section 115 CPC.

9. The Hon’ble Apex Court in *Inder Singh v. The State of Madhya Pradesh*, reported in *2025 LiveLaw (SC) 339* has settled the position with respect to limitation and has observed as under:

“There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is



that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.”

10. It is also pertinent to note the legal principle laid down by the Hon’ble Apex Court in ***M/s Anvita Auto Tech Works Pvt. Ltd. v. M/s Aroush Motors***, reported in ***2025 INSC 1202***, which is as under:

“The object of the procedural rules is to advance the cause of justice and not to thwart it and when the rigid adherence to technicalities of procedure causes injustice, courts have to come to the rescue by adopting a liberal approach. The courts cannot countenance a situation where substantial justice is sacrificed at the altar of procedural rigidity. Where substantial justice is at stake, technicalities must give way to ensure that the litigant is afforded sufficient opportunity to defend. The present controversy must be tested on the said principle.”

11. Adverting now to the facts of the present case, it is evident from the record that Title Appeal No. 12 of 2013 had already been restored to its original file and number by a reasoned order dated 21.01.2017 passed in Miscellaneous Case No. 11 of 2016, subject to deposit of cost of Rs.5,000/- within three weeks. The restoration of the appeal itself shows that the learned Trial Court was satisfied with the explanation offered by



the petitioner for earlier non-prosecution. The direction for payment of cost was intended to balance equities and compensate the opposite party, and not to non-suit the petitioner on a technical lapse. The materials on record further disclose that despite non-deposit of cost within the stipulated period, the petitioner continued to pursue the matter and regular *pairvi* was made, which is reflected from the order sheets. In such circumstances, rejection of the subsequent prayer of the petitioner for permission to deposit the cost solely on the ground of delay and laches, without examining whether the lapse was willful or whether any prejudice was caused to the opposite party, amounts to a mechanical exercise of jurisdiction and defeats the very object of restoration of the appeal.

12. Notably, the Hon'ble Apex Court in ***Sushil Kumar Sen v. State of Bihar***, reported in (1975) 1 SCC 774 has observed as under:

“The procedural law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly



inequitable.....”

13. The Hon'ble Apex Court in ***Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors.***, reported in ***(1987) 2 SCC 107*** has laid down general principles with respect to adoption of liberal approach by the courts while adjudicating matters including substantial rights of the parties. It is held as under:

“3.The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every*



second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.....”*

14. The Hon’ble Apex Court, based on ***Sushil Kumar Sen (supra)*** has further laid down similar principle ***in Kailash v. Nanhku and Ors.***, reported in ***(2005) 4 SCC 480***, as hereinunder:

“28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity



of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.....”

15. Moreover, the Hon’ble Apex Court has consistently held that procedural laws are intended to advance justice and not to thwart it. The Hon’ble Apex Court in ***N. Balakrishnan v. M. Krishnamurthy***, reported in ***(1998) 7 SCC 123***, has held as under:

“13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would



have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

16. Now, it is well settled that procedural laws are meant to advance the cause of justice and not to frustrate it, and that courts should ordinarily lean in favour of deciding matters on merits rather than shutting the doors of justice on technical grounds. In the present case, the learned Trial Court, having once exercised its discretion in restoring the appeal, was required to adopt a pragmatic and justice-oriented approach while considering the prayer of the petitioner for deposit of cost beyond the stipulated period. The impugned order, however, reflects a rigid and hyper-technical approach, wherein the learned Trial Court failed to consider that the delay in deposit of cost was neither contumacious nor intentional and that the petitioner stood ready to comply with the condition imposed. Such an approach, in the opinion of this Court, results in failure to exercise jurisdiction in accordance with law.

17. In view of the aforesaid discussions and principle laid down by the Hon'ble Apex Court, this Court is of the



considered opinion that the impugned order dated 06.07.2017 cannot be sustained in the eye of law. The learned Trial Court failed to take into account the relevant facts, the conduct of the petitioner in diligently pursuing the appeal and the settled legal position that conditional orders relating to costs should not be enforced in a manner so as to defeat substantive rights. The impugned order, therefore, suffers from material irregularity in exercise of jurisdiction and has resulted in grave prejudice to the petitioner.

18. Accordingly, the Civil Revision application is allowed. The impugned order dated 06.07.2017 passed in Miscellaneous Case No. 11 of 2016 by the learned Trial Court is hereby set aside. The petition dated 06.07.2017 filed by the petitioner is allowed and the petitioner is permitted to deposit the cost of Rs.10,000/- within a period of four weeks from the date of this order before the learned Trial Court.

(Ramesh Chand Malviya, J)

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