

IN THE HIGH COURT OF JUDICATURE AT PATNA

SECOND APPEAL No.502 of 2018

- =====
1. The Principal Secretary Road Construction Department, Government Of Bihar, Patna
 2. The Engineer in Chief Road Construction Department, Government Of Bihar, Patna
 3. The Superintending Engineer Road Construction Department, Muzaffarpur
 4. The Executive Engineer Road Construction Department, Muzaffarpur

... .. Appellant/s

Versus

1. Punam Kumari Sharma W/o Late Nageshwar Thakur Vill.- Balua, P.O.- Dumra, p.s.- Runnisaidpur, Distt.- Sitamarhi, Present Address C/o Radheshyam Thakur, Mohalla- Sahu Road, Near Deepak Cinema, Distt.- Muzaffarpur
2. The State of Bihar through District Collector, Muzaffarpur
3. The Circle Officer, Kanti, Muzaffarpur

... .. Respondent/s

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Limitation Act – section 5 – Code of Civil Procedure – Second Appeal – Necessary Party – “sufficient cause” for delay in filing appeal – application for condoning the delay of 5 years and 6 months in filing the memo of second appeal – argument on behalf of Appellants that while they were necessary party in the subject matter, they were not made party in the underlying title suit and as such were unaware with regard to any such proceeding and suddenly when the officials of the Execution Court came for the execution of the decree passed in underlying Title Suit then they could learnt about the same.

Findings: for condonation of delay, the discretion has been deliberately confirmed on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice – word “sufficient cause” in Section 5 of the limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any deliberate tactics, want of bona fides, deliberate in action or negligence on the part of the appellants – appellants are in possession of the suit property and their interest is involved and the plaintiff has not chosen to make the appellants as party in the suit or appeal – there is no material on record to suggest that appellants had knowledge of the suit or the appeal – appellants have given sufficient cause for condonation of delay – delay in filing the memo of appeal condoned – application allowed. **(Para- 1, 4, 13, 14)**

1998 (7) SCC 123

.....**Relied Upon.**

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... .. Respondent/s

Appearance :

- | | | |
|--------------------------|---|--|
| For the Appellant/s | : | Mr. P.K. Shahi, Advocate General
Mr. S.D. Yadav, AAG-9
Mr. Dinesh Maharaj, AC to AAG-11
Mr. Jitendra Kumar, AC to Ex-AAG-11 |
| For the Respondent No. 1 | : | Mr. Aditya Shankar Pd., Adv.
Mr. Sanchay Srivastava, Adv.
Mr. Sushant Srivastava, Adv.
Mr. Ashish Kumar Palit, Adv. |
| For the Intervenor | : | Mr. Upendra Kumar Chaubey, Adv. |

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

26 20-01-2025

Re: I.A. No. 46 of 2019

This interlocutory application has been filed for condoning the delay of 5 years and 6 months in filing the memo of appeal.

2. This Second Appeal has been filed against judgment and decree dated 09.02.2012 and 16.04.2013 passed in Title Appeal No. 23 of 2012 by Ad hoc Additional District



Judge-V, Muzaffarpur, whereby the judgment and decree passed in Title Suit No. 632 of 2008 by Sub Judge-IV, Muzaffarpur has been affirmed against defendant nos. 1 and 2/respondent nos. 2 and 3 along with a petition seeking leave to file Second Appeal against the impugned judgment and decree. However, the appellants were not party to the suit. The said application for seeking leave to file Second Appeal has been allowed *vide* order dated 11.05.2023.

3. Heard Mr. P.K. Shahi, learned Advocate General assisted by Mr. S.D. Yadav, learned AAG-9, appearing on behalf of the appellants and Mr. Aditya Shankar Prasad, learned counsel for the respondent no. 1 appearing on behalf of the respondent no. 1.

4. Learned senior counsel for the appellants submits that the aforesaid suit was filed against the State of Bihar through the District Collector, Muzaffarpur and Circle Officer, Kanti, Muzaffarpur while property in question belongs to the appellants (Road Construction Department, Government of Bihar) and they were not made party in the suit and they were necessary party in the subject matter and their rights have been per-judicially and adversely affected. Hence, the appellants filed this appeal against the impugned judgments and decree passed



by the lower court below. It is submitted that the appellants were unaware with regard to any such proceeding and suddenly the officials of the Execution Court came for the execution of the decree passed in Title Suit No. 632 of 2008 and then they could learnt about the same. The Execution Case No. 05 of 2014 has been filed by the decree holder for execution of impugned judgment and decree passed against the State of Bihar through District Collector, Muzaffarpur, Circle Officer, Kanti and Executive Engineer, Mechanical Division, Road Construction Department, Muzaffarpur although Executive Engineer Mechanical Division Road Construction Department, Muzaffarpur was not party to the suit or appeal. After Admission of Execution Case, the notices were issued to the respondents including the appellant no. 4. The learned Execution Court accepted the services of notice after passing of 30 days of the notice against respondent nos. 2 and 3 as well as appellant no. 4. It is further contended that from Column-10 of the aforesaid Execution petition, it is apparent that the Execution of decree has been sought for against the Executive Engineer, Mechanical Division, Road Construction Department, Muzaffarpur and the District Collector, Muzaffarpur.

5. Learned senior counsel further submitted that a



notice dated 14.06.2018 was issued by the Office-Incharge/Nazir, Civil Court Muzaffarpur. The said notice was received in the office of Executive Engineer Mechanical, Muzaffarpur *vide* Letter No. 373 dated 14/15.06.2018 whereby direction was issued to vacate the land, in question, as the land in question belongs to the appellants and hence, the aforesaid letter was forwarded by Executive Engineer, Mechanical through its Letter No. 150 dated 17.09.2018. It is further submitted that the appellants first time learnt about the impugned judgment and decree, thereafter, the appellant no. 4 consulted with the Advocate, who prepared grounds of appeal and submitted before the authority concerned for its approval. The grounds of appeal were approved and returned to the appellant no. 4 on 19.11.2018 with authorization to assail the impugned judgments and decree by filing Second Appeal in the instant matter. Soon thereafter memo of appeal has been filed on 27.11.2018. Learned senior counsel for the appellants further raised serious objection with regard to execution of decree. It is submitted that the decree passed in the aforesaid suit is not executable since the reliefs sought for declaration of right, title and interest over the suit property and confirmation of possession and also to declare that the suit property was



wrongly and illegally recorded in the name of State of Bihar in the Revisional Survey Khatiyon by the Survey Authority. It is apparent from the relief that no prayer for recovery of possession has been claimed.

6. On the other hand, learned counsel for the respondent no. 1 vehemently submitted that the appellants were having knowledge of the passing of the judgment and decree dated 09.02.2012. The aforesaid suit was filed against the State of Bihar and another and the present appellant no. 1 is Principal Secretary, Road Construction Department, Government of Bihar, which is nothing but an instrumentality of the State of Bihar within the meaning of Article 12 of the Constitution of India. The Road Construction Department is the department of Government of Bihar which over sees construction of roads and other works entrusted to it whereas the Collector of the District is over all in-charge of all the departments under the State Government. It is further submitted that defendant no. 1 and (the State of Bihar) was a party in the suit and also in the appeal i.e. Title Appeal which was filed through the Collector, Muzaffarpur and Circle Officer, Kanti and the same was well within the knowledge of the appellants.

7. The present appeal has been filed much beyond the



prescribed period of 90 days and there is inordinate delay of about more than 5 years 6 months. The appellants have no sufficient cause to explain the delay. Reliance has been placed in the case of ***Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors.*** reported in ***2021 SCC Online SC 1260*** wherein the Apex Court has held that *“even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute.”* A reference has also been made to the decision of Hon'ble Supreme Court in ***Ajay Dabra Vs. Pyare Ram*** reported in ***2023 SCC Online SC 92*** wherein it has been held as follows:-

"13. This Court in the case of Basawaraj vs. Special Land Acquisition Officer [(2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows: -

"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or



remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature."

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

8. Learned counsel for the respondent submits that delay may not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to other side. In the present case sufficient cause has not been shown for condoning the delay. The delay is liable to be condoned merely because some persons have been granted relief on the facts of their own case.



9. Learned counsel for the respondent further submits that the Hon'ble Supreme Court has laid down the law to test whether inordinate delay in filing the proposed appeal ought to be condoned or not. The Reliance has been placed in the case of ***Pathapati Subba Reddy (Died) By L.Rs. & Ors. Vs. The Special Deputy Collector (LA)*** decided on 08.04.2024 wherein in paragraph no. 26, the Apex Court has held that “*On a harmonious consideration of the provision of law and the law laid down by this Court, it is evident that:-*

(i). Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii). A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii). The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv). In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;



(v). Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi). Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii). Merits of the case are not required to be considered in condoning the delay; and

(viii). Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

10. The submission of the counsel for the plaintiff/respondent is that if the negligence can be attributed to the appellants, then necessarily the delay shall not be condoned. “The real test for the sound exercise of discretion by the High Court in this regard is not the physical running of time as such but the test is whether by reason of delay, there is such negligence on the part of the appellant so as to infer that he has



*given up his claim or where the appellants have moved the writ court, the rights of third party have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay.” This view has been taken in the case of **Municipal Council Ahmed Nagar & anr. Vs. Shah Haidar Beg & Ors.** reported in **2000 (2) SCC 48**.*

11. It is further submitted that when the State of Bihar was itself a party to a proceeding and it loses the matter on merit and it is established that the State of Bihar has no concern whatsoever when the land in question as well as the entry in Revisional Survey Khatiyani in the name of State of Bihar itself was a wrong entry then how occasion arises for one Department of the State of Bihar to approach this Court. The appellant has miserably failed to sufficiently explain the reason for causing of the said inordinate delay, therefore, the delay cannot be condoned in the present appeal.

12. Considering the submissions made by the learned counsels appearing for the parties as well as upon careful and anxious consideration to the rival contentions raised at the Bar, it is necessary to consider the knowledge of the appellants with regard to the suit and its judgment.

13. It is admitted fact that appellant was neither made



party in the suit nor in appeal. The instant suit was filed for declaration of plaintiff's right, title and interest over the Schedule-I land and confirmation of possession over Schedule-I land and also to declare that the State of Bihar has got no concern with the disputed land and as such Revisional Survey entry is wrong. It is made clear that the aforesaid suit was filed by the plaintiff/respondent no. 1 against the State of Bihar through District Collector, Muzaffarpur and Circle Officer, Kanti, Muzaffarpur. The suit was decreed. Being aggrieved by the aforesaid judgment and decree, the State of Bihar through District Collector and Circle Officer, Kanti filed Title Appeal No. 23 of 2012. During the pendency of appeal, the plaintiff/respondent filed an application for amendment in the relief no. (i) of the plaint "as or in alternative deliver the possession by the process of the court" which was allowed by the lower appellate court on 27.02.2013 and accordingly plaint was amended. Thereafter, the plaintiffs filed the Execution Case bearing Title Execution Case No. 05 of 2014 before Sub Judge-IV, Muzaffarpur, not only against defendant nos. 1 and 2 but also against Executive Engineer, Mechanical Division, Road Construction Department (appellant no. 4). Later on, it was transferred to the court of Sub Judge-II, West, Muzaffarpur. As



per the case of the plaintiff/respondent, the delivery of the possession was effected on 18.11.2018 and delivery of possession report of Nazir was perused by the learned Sub Judge-II, West, Muzaffarpur on 24.11.2018. Later on, the delivery of possession was confirmed by order dated 03.10.2019. However, the appellants received the notice issued by the Office-In-charge, Nazir, Civil Court, Muzaffarpur by the Office of Executive Engineer Mechanical Division *vide* Letter No. 373 dated 14/15.06.2018 whereby the request was made to vacate the land in question till 29.06.2018 after preparation of inventory of the articles so that delivery of possession of the suit land can be handed over to the plaintiff decree holder. It is admitted case of the decree holder-respondent that the Road Construction Department is in possession of the land in question. The Road Constitution Department has not been made party to the suit. From perusal of the order sheet of Execution Case No. 05 of 2014, it appears that the notices issued in execution proceeding against defendant nos. 1 and 2 and appellant no. 4 also were treated as valid service after lapse of 30 days *vide* order dated 06.11.2015. It is also apparent from the order sheet of Title Execution Case No. 05 of 2014 that there is no service report with regard to notices issued in the aforesaid



execution proceeding. It is case of the appellants that they received notices issued by Office-In-charge, Nazir *vide* Letter No. 373 dated 04/2018 / 06/2018 and Letter No. 150 dated 17.09.2018 then they learnt about the impugned judgment and decree. Thereafter, the *pairvikar* of the appellants filed requisition for certified copy of judgment and decree which was obtained and the appellant no. 4 consulted with Advocate and filed the present memo of appeal on 27.11.2018 along with the limitation petition after its approval by the authorities concerned.

14. Considering the aforesaid facts and submissions made by the parties, for condonation of delay, the discretion has been deliberately confirmed on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. Sufficient cause for not making the application within the period of limitation should be understood and applied in a reasonable, pragmatic, practical and liberal manner depending upon the facts and circumstances of the case and the nature of case. The word “sufficient cause” in Section 5 of the limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any deliberate tactics, want of *bona fides*, deliberate in action



or negligence on the part of the appellants.

15. In view of the prayer in the suit, it is apparent from the record that the declaration of title and confirmation of possession had been sought originally. Later on, in appellate stage in 2013, alternative prayer was made for recovery of possession through process of court which was allowed by the appellate court. Even the plaintiff/respondent did not make a prayer against the occupier of the land in question i.e. appellant no. 4. The appellants are in possession of the suit property and their interest is involved and the plaintiff has not chosen to make the appellants as party in the suit or appeal. There is no material on record to suggest that appellants had knowledge of the suit or the appeal.

16. In the aforesaid facts and averments made, the appellants have given sufficient cause for condonation of delay. As per dictum laid down in the case of ***Balakrishnan Vs. M. Krishnamurthy*** reported in ***1998 (7) SCC 123*** it has been held as follows:-

"It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only



criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

17. In the above dictum, it is specifically mentioned that once a court accepts the explanation as sufficient, it is result of positive exercise of discretion.

18. In view of the discussions made hereinabove, the delay in filing the memo of appeal is hereby condoned.

19. Accordingly, I.A. No. 46 of 2019 is allowed.

(Khatim Reza, J)

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