

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.632 of 2019
In
Civil Writ Jurisdiction Case No.11415 of 2010

Mr. Raju Kumar Son of Gautam Paswan R/o Village-Padumpur, P.S.
Mashrak, District-Saran

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary Department of Human Resources Development,
Govt. of Bihar, Patna
3. The Principal Secretary Panchayati Raj Department, Govt. of Bihar, Patna
4. The Director Primary Education, Govt. of Bihar, Patna
5. The Member District Teacher Employment Appellate Authority, Saran at
Chapra
6. The Collector Saran at Chapra
7. The District Education Officer Saran at Chapra
8. The Block Development Officer Mashrakh, Saran
9. Mukhiya Gram Panchayat Raj, Dumarshan, Patna
10. Vakil Ram S/o Late Rama Ram R/o Village-Dumarshar Bangra, P.S.
Mashrakh, District-Saran

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Awadhesh Kumar Singh, Advocate
For the Respondent/s : Mr. Shashi Shekhar Tiwari, AC to AAG-15

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-11-2024

Reg. I.A. No. 01 of 2022

Heard I.A. No. 01 of 2022.

2. There is delay of about four years seven months and twenty two days. The reasons assigned for the enormous delay of four years and few days are that Mr. Yashraj Bardhan was



advocate on record, he is stated to have not informed the appellant. Thereafter, it is learnt that he has taken back the papers from the advocate on record by Mr. Ambika Bhagat who accepted the brief and he did not file present L.P.A. and died on 03.09.2017.

3. If there is inaction on the part of the deceased advocate during the period from 2014 to 2017 and there is no follow up of action on behalf of the appellant to ascertain whether has he taken any steps to file L.P.A. or not and if he slept over the matter for about five years, he cannot blame advocate alone. On the other hand he himself is not vigilant about his case. Therefore, sufficient cause has not been shown so as to condone the enormous delay on behalf of the counsel for the appellant during the intervening period from 2014 to 2017. Even from 2017 to 2019 there is no sufficient cause has been shown.

4. Learned counsel for the petitioner to condone the enormous delay of about four years seven months and twenty two days he is relying on a decision of the Hon'ble Supreme Court in the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur NAFAR Academy and Ors.** reported in **2014 (1) PLJR 290** para 14 and 16 is stated as under:-

“14. In B. Madhuri Goud vs. B.Damodar Reddy the Court referring to earlier decisions reversed the decision of the learned Single Judge who had condoned



delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:-

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”



5. No doubt, sufficient cause is required to be taken note of for the purpose of condonation of delay and so also whether litigant is vigilant or not is required to be examined. Last week Hon'ble Supreme Court in the case of **Rajneesh Kumar and Another vs. Ved Prakash** reported in **2024 SCC online SC 3380** while taking note of earlier decision of the Hon'ble Supreme Court in para 11 and 12 it is held as under:-

“11. In the aforesaid context, we may refer to a decision of this Court in the case of **Salil Dutta v. T.M. & M.C. Private Ltd., (1993) 2 SCC 185**, wherein this Court observed as under:-

“8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [(1981) 2 SCC 788



: AIR 1981 SC 1400] must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the Court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessman who know where their interest lies. It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear before the Court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they chose to non-cooperate with the Court. Having adopted such a stand towards the Court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.”

12. As regards the law of limitation we may refer to the decision of this Court in **Bharat Barrel & Drum MFG Co. V. The Employees State Insurance Corporation,**



(1971) 2 SCC 860, wherein this Court held as under:-

“The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dormientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore, the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims.”

6. In the light of later decision and the fact that appellant was not vigilant in pursuing his lis for more than three years and further there is a delay of about two years from 2017. The overall delay is about four years seven months and twenty two days. In the present case it is not only a delay there are laches on the part of the appellant. Hon’ble Supreme Court in the case of



State of Jammu Kashmir vs. R.K.Zalpuri and others reported in

AIR 2016 SC 3006, in Paragraph 20 it is held as under :-

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and others {(2009) 1 SCC 168}, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) Adjudication of writ petition involves any complex and disputed question of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) The petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) Person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) Ex facie barred by any laws of limitation;

(f) Grant of relief is against public policy or barred by any valid law; and host of other factors”

[Underline Supplied]

7. One of the principle laid down by the Hon'ble Supreme Court in the aforementioned decision is that writ Courts were required to examine delay and laches. In the light of these facts and circumstances the appellant has not made out a case for condonation of delay of four years seven months and twenty two



days in filing L.P.A. 632 of 2019. Accordingly, the present I.A. No. 01 of 2022 stands dismissed. Resultantly L.P.A. No. 632 of 2019 stands dismissed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Ankit Kumar/-

AFR/NAFR	NAFR
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