

(2020) 01 PAT CK 0337

In the Patna High Court

Case No : Civil Review No. 208 Of 2018, Second Appeal No. 455 Of 2010,
Interlocutory Application No. 4991 Of 2018

Mahendra Prasad Singh

APPELLANT

Vs

Kanhaiya Singh And Ors

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Citation : (2020) 01 PAT CK 0337

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Naresh Chandra Verma, Natraj Verma

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner.
2. The present Interlocutory Application has been filed seeking condonation of delay of one year four months sixteen days in filing of Civil Review No. 208 of 2018.
3. Learned counsel for the petitioner drew attention of the Court to paragraph no. 3 of the Interlocutory Application.

The same reads as under:

"3. That the counsel for the Petitioner could not inform the Petitioner as the Petitioner could not be contacted on phone and thereafter he forgot about the matter but only on 18.06.2018 when the Petitioner came to the Petitioner's counsel to file another case i.e. Civil Revision No.85 of 2018 then counsel for the Petitioner informed him about the dismissal of the case upon his enquiry then he returned Supaul and after arranging fund, came to Patna on 7.7.2018 and accordingly the Review petition has been drafted and is being filed on 9.7.2018."

4. From the aforesaid, the Court finds that such ground is totally vague and unacceptable, especially when the matter having serious consequences for the

petitioner stood dismissed and the law with regard to moving before any further Court stipulating such course of action within a limited period of time. Thus, such ground does not inspire confidence for the Court to be persuaded to rely on the same and condone such delay.

5. At this juncture, for serving the larger ends of justice, the Court also called upon learned counsel for the petitioner to advance his arguments on the merits of the main Civil Review Application.

6. Learned counsel for the petitioner submitted that though the Second Appeal stood dismissed on the ground of delay in filing the substitution petition with regard to the deceased sole respondent, the same was not proper as the Courts have held that on technicalities such petition for condonation should not be rejected, rather, the Court should compensate the opposite party, and to the extent possible, the approach should be to decide the matter on merits.

7. Having considered the aforesaid, in view of the coordinate bench on 24.01.2017 relying on the decision of the Hon'ble Supreme Court in Esha Bhattacharjee Vs. Raghunathpur Nafar Academy reported as (2013) 12 Supreme Court Cases 649 having held that the appellant has failed to establish sufficient cause for condoning the delay in filing the petition for substitution with regard to the deceased sole respondent, this Court finds that review of such order is not permissible as it would mean taking a view on the basis of the same facts and circumstances as was available before the Court on that day. This would amount to substituting a view taken by the Court with another view and most importantly, on the very same facts and circumstances and materials before the Court. As the same can only be done by the superior Court, the Civil Review Application itself, in the considered opinion of the Court, is misconceived.

8. In the aforesaid background, taking an overall view in the matter, the Court finds that sufficient cause has also not been shown explaining the delay of one year four months sixteen days in filing of the Civil Review Application.

9. Accordingly, the prayer made in Interlocutory Application No.4991 of 2018 for condonation of delay in filing of Civil Review No. 208 of 2018 stands dismissed. Consequently, the Civil Review Application No. 208 of 2018 also stands dismissed, both on the ground of limitation as well as on merits.