
(2008) 07 PAT CK 0220
In the Patna High Court
Case No : LPA No. 657 of 2007

The State of Bihar and Others

APPELLANT

Vs

Dayanand Jha

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Citation : (2009) 1 PLJR 213

Hon'ble Judges : R.M. Lodha, C.J.; Ghanshyam Prasad, J

Bench : Division Bench

Advocate : Braj Kishore Pd. Sinha, for the Appellant; M.K. Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. We heard the counsel for the parties. The appeal suffers from delay of 469 days and for condonation thereof, an application (I.A. No. 4397 of 2007) has been made.

2. That, the impugned order came to be passed on 27th March, 2006, is not in dispute. It is stated that the cause of action for filing the present Letters Patent Appeal arose when a Fax message from the State Counsel was received in legal section about the disposal of Civil Review No. 206 of 2000 filed by the State on 16.4.2007. It is further stated that thereafter an application for obtaining certified copy of the judgment in Civil Review No. 206 of 2000 was made. The certified copy of the judgment was received on 9.5.2007 and the Under Secretary endorsed the file to Establishment Section on 10.5.2007. The file was received in the Establishment Section on 11.5.2007 and the Establishment Section put up the file for proper decision in the matter on 21.5.2007. It is further stated that on 12.6.2007, the Principal Secretary forwarded the file to the Law Department for advice of the Advocate General whose opinion was received and thereafter the file was returned on 13.7.2007. After receiving the legal opinion from the Advocate General, the matter was handed over to the State Counsel on 3.8.2007 and then the appeal has been preferred.

3. A supplementary affidavit has also been filed in support of the limitation petition and in paragraph 7 thereof, it is stated that after the order dated 27th March, 2006 passed in the present matter, the State authorities waited for the disposal of Civil Review No. 206 of 2000 which was finally heard on 12.4.2007 and in view of the order passed therein, the present appeal came to be filed.

4. The two affidavits that have been filed in support of the limitation petition, show the desperate effort on the part of the State Government in explaining the long delay of 469 days but even then they do not seem to have succeeded.

5. If the cause of action for filing the appeal arose, according to the appellant, when Civil Review No. 206 of 2000 came to be dismissed, obviously it would show that the State was not aggrieved by the impugned order dated 27th March, 2006 at all. That the Civil Review application No. 206 of 2000 is not a review application arising from the present matter, is not disputed by the State counsel. If the Civil Review No. 206 of 2000 did not relate to the present matter where was the occasion to wait for decision in that review application. If the State was aggrieved by the impugned order dated 27th March, 2006, of which the certified copy seems to have been received in the month of April, 2006, there was no impediment for the State to file appeal but that was not done.

6. Having considered the matter thoughtfully, we are satisfied that despite the liberal approach that we always have in the consideration of the matter of condonation of delay at the instance of the State, we find that the appellants have failed to show sufficient cause justifying the condonation of long delay of 469 days.

7. We, accordingly, reject I.A. No. 4397 of 2007. Since the appeal is time barred and the application for condonation of delay has been rejected, L.P.A. is liable to be dismissed as time barred and we order accordingly. Upon dismissal of L.P.A. as time barred, application for stay being I.A. No. 2032 of 2008 does not survive and also stands dismissed.