
(2006) 11 PAT CK 0025
In the Patna High Court
Case No : LPA No. 882 of 2005

The State of Bihar and Others	Vs	APPELLANT
M/s Vishnu Sugar Mills Ltd. and Another		RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2007) 1 PLJR 199

Hon'ble Judges : J.N. Bhatt, C.J.; Shailesh Kr. Sinha, J

Bench : Division Bench

Advocate : P.K. Shahi and Piyush Lall, for the Appellant; Y.V. Giri, Ganesh Prasad Singh, Jyoti Sharan and Khalid Ahsan, for the Respondent

Judgement

1. As ill luck would have been, a very ticklish, but interesting, question has emerged in this group of four Letters Patent Appeals, by invocation of Clause 10 of the Letters Patent of the Patna High Court Rules, directed against one composite order of the learned Single Judge, dated 28.2.2005 passed in a group of four writ petitions viz. CWJC Nos. 15586 and 16311 of 2004 and CWJC Nos. 174 and 343 of 2005. I.A. No. 4052 of 2005 in L.P.A. No. 882 of 2005, has been filed for condonation of delay of 123 days, whereas I.A. No. 4012 of 2005 in L.P.A. 873 of 2005, I.A. No. 4016 of 2005 in L.P.A. 874 of 2005 and I.A. No. 4019 of 2005 in L.P.A. No. 875 of 2005 have been filed for condonation of delay of 135 days in filing these Letters Patent Appeals against the impugned order of the learned Single Judge.

2. When the matter was placed before the concerned Bench then, it was ordered on 17.8.2005 that the limitation petition shall be considered at the time of admission.

3. Later on, all these group of four appeals came to be placed for admission and the matter came to be admitted by order dated 18.10.2005 passed in L.P.A. No. 875 of 2005 and analogous appeals but without, specifically, mentioning of passing any order on delay condonation applications.

4. This has given a rise to an unusual and ambiguous situation whereas ultimate anxiety of administration of justice is to see that justice is done and no meritorious matter should be thrown over board on the anvil of processual justice. It is in these context, it is, rightly and jointly, submitted that in this extraordinary situational reality, the first thing the Court is required to do is to recall the admission order for want of passing any order on the Interlocutory Applications for condonation of delay and, then, to consider their merit and thereafter decide the admission issue. We find that this course can be accepted in the larger interest of justice.

5. It is, therefore, we recall the order dated 18.10.2005 admitting this group of four Letters Patent Appeals passed in L.P.A. No. 875 of 2005 and analogous appeals, so as, first, to dispose of the delay condonation applications.

6. By the joint request, we have taken up the delay condonation applications today itself. As noticed above, delay of 123 days in L.P.A. No. 882 of 2005, and 135 days" in the other L.P.As. is sought to be condoned. It is not in dispute that the certified copy of the impugned judgment was applied for within one week after the impugned order came to be delivered. This is, prima facie, material to show that the Government had not given up the cause and accepted the impugned judgment as final.

7. In all these four matters, responsible officers of the concerned Department of the appellant State of Bihar have filed an affidavit stating the details of the delay and the ground thereof. In short, inter and intra departmental proceedings and process have caused the delay. As against that, the respondents have filed objections questioning the genuineness of the delay or there being any sufficient cause for condonation of delay in terms of the provisions of Section 5 of the Indian Limitation Act. Obviously, what inter and intra departmental delay has taken place, can be only within the personal knowledge of the appellants and not the respondents. Apart from that, even according to the settled proposition of law of delay condonation jurisprudence, processual justice cannot be permitted to march over the substantial justice. Ordinarily, if delay is explained and sufficient cause is shown, no meritorious matter should be thrown away on the technical ground of delay condonation.

8. There are catena of judicial pronouncements on the proposition of law of condonation of delay, but, the settled proposition, in short, is that ordinarily, in case of delay condonation applications, at the instance of the party and more so, when it is impersonal authority or body, technicality should not be allowed to perpetuate in justice being done on substantial cause and merit.

9. Considering the factual profile, unusual situation, and aforesaid grounds, we are satisfied that there were sufficient cause for not filing these Letters Patent Appeals within the period of limitation, as grounds are clearly mentioned and they are supported by affidavit. Therefore, in all the four cases, delay in filing the appeals shall stand condoned and all the four I.As, shall stand allowed. No costs.

10. In view of the facts and circumstances and extraordinary situation highlighted, in which the appeal matters were earlier admitted and thereafter that order had to be recalled for technical reasons, we find that there is a fairly arguable case. Therefore, all these appeals shall stand admitted.

11. As all the parties are represented, no notice need be issued. So far as the applications for stay of the impugned order are concerned, let the matter be notified on a consensual date and time, i.e., on 14.11.2006 at 2.15 p.m.