

ITEM NO.28

COURT NO.3

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Diary No(s) . 15962/2017

(Arising out of impugned final judgment and order dated 21-01-2016 in SA No. 207/2015 passed by the High court of patna)

THE STATE OF BIHAR THROUGH DISTRICT MAGISTRATE Petitioner(s)

VERSUS

SUCHIT HALWAI Respondent(s)

Date : 04-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Rudreshwar Singh,Adv.
 Mr. Gopal Jha,Adv.
 Mr. Gautam Singh,Adv.
 Ms. Isha Singh,Adv.
 Ms. Snehil Sonam,Adv.
 Mr. Samir Ali Khan, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

This special leave petition is filed by the State of Bihar. By the impugned judgment, Second Appeal No. 207 of 2015 preferred before the High Court of Patna with a delay of 4 years and 23 days, was dismissed as the High Court declined to condone the delay.

Aggrieved by the said order, the State has filed the instant Special Leave Petition.

The learned counsel appearing for the State very vehemently argued that he would be failing in his duty if he did not bring the

earlier judgment to the notice of this Court. He placed a judgment reported in 2000(9) SCC 94 (*State of Bihar and Others vs. Kameshwar Prasad Singh and Another*). The learned counsel relied upon para 11 of the said judgment which reads as follows:-

"11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in *Collector, Land Acquisition Vs. Katiji* (1987) 2 SCC 107 held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of the courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of the power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

It must be mentioned here that the delay which was the subject matter of the dispute in the above mentioned case (supra) was about 679 days. In the instant case as already noticed, the delay is more than 4 years.

Coming to the explanation offered for the delay, it is stated before the High Court at para 4 of the IA no. 8561/2015 in S.A. No. 207/2015 which reads as follows:-

"That the then Circle Officer, Guthani remained ill for some time and he could not take up the matter and later on he was transferred from Guthani Anchal elsewhere. The new Circle Officer joined the post of Circle Officer Guthani Anchal and took up the matter for filing the appeal. The Circle Officer, Guthani applied for certified

copy of the judgment and decree on 18.7.2014 and the same was delivered on 8.8.2014 by the copying department. Thereupon the Circle Officer, Guthani obtained the approval from higher authorities to file the appeal. Hence this appeal. It is clear from facts submitted above the present appeal could not be filed due to unavoidable circumstances and decision approval to file the appeal."

In our opinion, it is a shallow formality of an explanation. Nevertheless, the State and its counsel have the audacity to state before this Court that they will be failing in their duty if they did not bring the above mentioned judgment to the notice of this Court.

The whole process of law is being reduced to a mockery. Instead of taking action against the officers who are responsible for prosecuting the litigation, the State of Bihar resorts to rhetoric which we find it difficult to appreciate.

In the circumstances, we deem it appropriate to summon the Chief Secretary of Bihar to offer the explanation.

Issue notice to the Chief Secretary of the State of Bihar.

List the matter after four weeks.

Let the order be served to the Chief Secretary by today.

(OM PARKASH SHARMA)
AR CUM PS

(RAJINDER KAUR)
COURT MASTER