

Sheo Shanker Prasad Vs The State of Bihar

Court: Patna High Court

Date of Decision: Dec. 22, 1989

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 22 Rule 11, Order 22 Rule 9

Land Acquisition Act, 1894 â€” Section 18, 30

Limitation Act, 1963 â€” Section 5

Citation: (1990) 1 PLJR 485

Hon'ble Judges: B.N. Sinha, J

Bench: Single Bench

Advocate: R.B. Mahto and K.P. Yadav, for the Appellant; C.K. Sinha, Ad` for State and M.M. Prasad, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.N. Sinha, J.

This application under Order 22 Rules 9 and 11 of the CPC has been filed on behalf of heirs and legal representatives of

Appellant Shiv Shanker Prasad (since deceased) for setting aside the abatement of the appeal after condoning the delay u/s 5 of the Indian

Limitation Act in filing the application for setting aside the same and also for substituting their names in place of deceased Appellant.

The present appeal was filed by the Appellant Shiv Shanker Prasad (since deceased) against the judgment and order passed by the Special Land

Acquisition Judge, Siwan in Land Acquisition Case No. 641/154 of 1970-76 on reference under Sections 18 and 30 of the Land Acquisition Act.

2. Admittedly, the Appellant died on 19.7.1983 and thereon, the appeal abated and the present application for setting aside the abatement was

filed on 1.6.1989 on behalf of. his sons and daughters who are heirs and legal representatives of the deceased Appellant. The Petitioners have

prayed for condonation of delay on the ground that Petitioner No. 1 who appears to be the eldest son of the deceased Appellant is the Karta of

the family. and he is illiterate and rustic that after the death of deceased-Appellant, Petitioner No. 1 wrote a letter on 4.8.83 under certificate of

posting, after performing the last rites of his father, to their lawyer in the appeal, namely, Sri K.P. Yadav, Advocate, Patna High Court who had

been engaged by their father in this appeal, intimating him about the death of their father and for doing the needful that the Petitioners were under

the impression that their lawyer, might have taken necessary steps in the appeal and, therefore, did not make any further enquiry in respect thereof

that some time before filing of the present application, Petitioner No. 1 heard a rumour in his village that the opposite party was saying that he had

won the case in the Hon"ble High Court against the Petitioners that thereafter, Petitioner No. 1 sent a letter through registered post on 8.5.89 to

Sri K.P. Yadav, Advocate enquiring from him as to what he had done in the appeal which had been filed by his (of Petitioner No. 1) father

regarding whose death he had informed him through a letter and further requesting him to let him know the present position of the appeal at once,

as the opposite party had spread a rumour in the village that the Petitioners have lost their cases that on 29.5.89, the Petitioner No. 1 received a

letter dated 23.5.89, from Sri K.P. Yadav, Advocate informing him that the appeal has abated and asking him to come prepared with necessary

information regarding legal heirs of the deceased-Appellant for filing. substitution petition in the appeal that after making arrangement for necessary

expenses and. after collecting necessary information, Petitioner No. 1 came to Patna on 30.5.89 in the evening but he could not meet his Advocate

on that day and that on 31.5.89 the Petitioner No. 1 could meet Mr. K.P. Yadav, Advocate and the present petition could be prepared and was

filed on the next day.

3. The Petitioners have annexed the certificate of posting under which they claim to have sent the letter dated 4.8.83 to Sri K.P. Yadav as

Annexure-1; the true copy of the second letter purported to have been sent by Petitioner No. 1 on 23.5.89 under registered cover as Annexure-2

and the copy of the letter sent by Sri K.P. Yadav to them as Annexure-3.

4. Respondent Nos. 2 and 3 have filed counter affidavit opposing the prayer made on behalf of Petitioners stating therein inter alia that grounds

taken by the Petitioners are totally false that the Petitioner No. 1 did not send letter to Sri K. P. Yadav that Annexure-1 to the petition is forged

and fabricated; that the seal of the Post Office on Annexure-1 is not genuine and it shows some tampering in the date and month appearing therein

and that it can be obtained at any time by any person.

5. On the grounds mentioned in the counter affidavit, it has been prayed on behalf of Respondent Nos. 2 and 3 that the petition filed on behalf of

Petitioners for substituting their names and for setting aside the abatement after condoning the delay in filing the petition for the same be dismissed.

A supplementary affidavit by way of reply to the counter affidavit of Respondent Nos. 2 and 3 has been filed on behalf of Petitioners and they have

annexed thereto papers to show that the second letter mentioned above was sent by them under registered cover which was received by Sri K.P.

Yadav.

6. After going through the petition filed on behalf of Petitioners, I am satisfied that there was no negligence or inaction on their part. Petitioner No.

1 had sent letter to Sri K.P. Yadav, Advocate on 4.8.1983 informing-, him regarding the death of his father (deceased-Appellant) on 19.7.1983.

Thus, Petitioner No. 1 was very prompt in informing his Advocate regarding the death of his father and requesting him to do the needful. Of

course; the learned Counsel for Respondent Nos. 2 and 3 has challenged the genuineness of the certificate of posting (Annexure-1) and has

submitted that the date and month mentioned therein have been tampered. But it does not appear so to me after looking into the same, and I see

no reason in this submission made on behalf of Respondent Nos. 2 and 3 because I has been mentioned in the counter affidavit and also so argued

on their behalf that certificate of posting can be had from the Post Office at any time by any person. If it is so, I see no reason as to why instead of

procuring a certificate of posting of an ante dater from the Post Office concerned, Petitioner No. 1 will commit the mistake of tampering the date

and month thereafter It had been obtained by him. So I see no ground to disbelieve the case as made out on behalf of Petitioners in their petition

and to disbelieve the three annexures annexed to this petition and I am satisfied that sufficient cause has been shown by the Petitioners explaining

the delay in filing the petition.

7. Sri R.B. Mahto, appearing on behalf of Petitioners has rightly pointed out that in this, matter, liberal approach has to be made and he has placed

reliance on the principles laid down by the Supreme Court with regard thereto in Collector, Land Acquisition, Anantnag and Another Vs. Mst.

Katiji and Others, which reads as. follows:

It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not

appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principles 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 a judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of

removing injustice and is expected to do so.

8. Learned Counsel appearing on behalf of Respondent Nos. 2 and 3 has tried to distinguish this decision on the ground that in the instant case,

there was delay of about six years in filing the petition for setting aside the abatement and the principles laid down in the decision by the Supreme

Court will not apply in such cases of inordinate delay. But I see no substance in this submission. If sufficient cause has been shown by the

Petitioners explaining the delay, I see no reason as to why the same should not be condoned, whatsoever, may be the period of delay. The

Petitioners are simple villagers—ignorant and illiterate; A justice oriented approach in this matter, as, pointed out by the Supreme Court in the

above decision has to be adopted and I am satisfied that sufficient cause has been shown for condoning the delay. Merely because there is delay of

5 years, 10 months and 12 days, the prayer on behalf of the Petitioners cannot be refused.

9. I am fortified in my view by a decision of the Supreme Court in Ram Sumiran and Others Vs. D.D.C. and Others, in which it has been observed

as follows:

It is true that no steps were taken by the Appellants for bringing the legal representatives of deceased Respondent No. 5 on record for about 6

years, even though according to the Respondent No. 4, the Appellants knew about the death of Respondent No. 5. But merely because no

application was made by the Appellants for bringing the legal representatives of the deceased Respondent No. 5 on record, we do not think that in

the circumstances of present case, that would be a valid ground for refusing to grant the application of the Appellants for setting aside the

abatement and bringing the legal representatives of the deceased Respondent No. 5 on record because the Appellants are admittedly from the

rural area and in a country like ours where there is so much poverty, ignorance, and illiteracy, it would not be fair "to" presume that everyone

knows that on death of a Respondent, the legal representatives have to be brought on the record within a certain time. The ends of justice require

that the application for bringing the legal representatives of the deceased Respondent No. 5 should have been granted.

10. In the result, I allow this application and the abatement of the appeal is hereby set aside. Let the name of the Appellant-deceased be expunged

and in his place, the names of his heirs and legal representatives as mentioned in the petition kept at Flag-"A" be substituted. The Petitioners will

pay Rs. 110/-(One hundred and ten) to the Respondent Nos. 2 and 3 as costs.