
(2012) 3 PLJR 307

Patna High Court

Case No: LPA No. 520 of 2008

Binod Kumar Singh

APPELLANT

Vs

The Union of India and
Others

RESPONDENT

Date of Decision: July 29, 2008

Citation: (2012) 3 PLJR 307

Hon'ble Judges: R.M. Lodha, C.J; Kishore K. Mandal, J

Bench: Division Bench

Advocate: Shailendra Kumar Singh, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. We perused the report submitted by the Joint Registrar (Establishment) dated 26th July, 2008. In his report the Joint Registrar (Establishment)

has reported that the appeal is barred by 283 days. Reliance is placed on Chapter III A, Part II, Rule 7 of the Patna High Court Rules. Rule 7

reads thus:

Except where the Designated Officer is of the opinion that the stamp report regarding the defects is not correct or that the defects can be ignored

or that they are not curable, and in cases where any defect as specified in rule 6 is noticed, the filing shall be returned to the person presenting the

same with intimation regarding the defects to be re-filed after removing the defect within seven days. Any re-filing after the expiry of seven days

exclusive of date of return shall be subject to law of limitation.

It appears that the Joint Registrar (Establishment) without perusing the previous decision of this Court in Smt. Shubha Sinha Vs. Veer Kuwar Singh

University and Others, has made the report. We are afraid, he is not aware of the recent decision of this Court in the case of Smt. Shubha Sinha.

In paragraphs 3 and 4 of the report, the Division Bench observed thus:

3. We are of the opinion that the office objection must be overruled. When the memo of appeal was first presented in court on 21.12.2007 the

terminal point of filing appeal had arrived. It is with reference to that date of presentation of memo of appeal alone that the time taken in filing the

appeal can be computed, which is the only relevant date of presentation of the appeal inasmuch as the other defects can only be brought out after

accepting the presentation of appeal and examining the memo filed by the appellant. The fact that according to practice of the court memo of

appeal is not kept in the office of registry requesting the counsel to remove the defects in the Court itself, but is returned to appellant for removing

those defects outside court, to save further burden on office time, cannot alter the date of presentation or filing of memo of appeal in court, and

allow the limitation to expire. To illustrate if the memo of appeal is filed in Court on the last date of expiry of limitation with some technical or other

curable defects and instead of keeping the papers in court the same are returned to the counsel to resubmit after removing such other defects the

appeal will become barred by the time and is resubmitted. But if it is kept in Court the same will be within limitation, such a result is not envisaged

under law nor it can be countenanced.

4. It can be viewed from yet another angle if 17.12.2007 is accepted the date of presentation of appeal to the court, then the stamp reporter would

also not have jurisdiction to examine the memo and find the defects pointed to the counsel and require the same to be removed. The memo was

presented on 17.12.2007 but was not kept in the court but returned to the counsel is reflected in court proceedings. Presentation of the appeal on

17.12.2007 was complete. The other part of the transaction namely returning the memo of appeal to the learned counsel for removing the other

defects is based on procedure of the court in dealing with a file after presentation and would not affect the date of filing of appeal so as to alter the

computation of period of limitation. The period for the purpose of limitation has to be counted from the date of judgment upto first presentation. On

such consideration there is no denial that the presentation of the appeal was within the limitation.

2. It is true that the Division Bench has not specifically referred to Rule 7, Chapter III A Part II of the Patna High Court Rules but upon careful

reading of the said order, we can safely infer that the Division Bench was aware of the aforesaid provision.

3. In view of the aforesaid legal position as propounded by the Division Bench in the case of Smt. Shubha Sinha (supra), the office report that the

appeal suffers from a delay of 283 days is palpably erroneous.

4. The impugned order is dated 26th July, 2007. After excluding the time taken in obtaining the certified copy of the impugned order the limitation

expired on 1st October, 2007. The Letters Patent Appeal was presented for the first time on 10th October, 2007 for stamp reporting but the

same was returned to the counsel for the appellant as there were some defects in the memo of appeal. As laid down by the Division Bench in the

case of Smt. Shubha Sinha (supra) the relevant date for presentation of the appeal is the date when the memo of appeal is presented for the first

time. The appeal was presented for the first time on 10th October, 2007 and, thus, the delay does not exceed ten days.

5. Let notice of the application (I.A. No. 4053 of 2008) as well as that of appeal be issued to the respondents returnable on 21st November,

2008. Requisite process fees, notice and registered cover with A/D shall be supplied within one week from today, failing which the appeal shall

stand dismissed without further reference to the Bench.