

NON REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1159 OF 2009
(Arising out of SLP(C) NO.4924 of 2009)

(CC:1581 of 2009)

The State of Bihar & Ors. Appellants

Versus

Arjun Prasad RajakRespondent

J U D G M E N T

H.L. Dattu, J.

Delay condoned.

Leave granted.

1) Challenging the judgment and order passed by the High Court of Judicature at Patna in L.P.A. No. 690 of 2008 dated 15th September, 2008, the State of Bihar has filed this civil appeal. By the impugned judgment, the High Court has declined to condone the delay in filing the Letters Patent Appeal and, consequently, has rejected the appeal.

2) In filing the appeal, there was a delay of one year and eighteen days. Alongwith the appeal, an application under Section 5 of the Limitation Act had been filed to condone the delay in filing the appeal, if any. In the affidavit filed alongwith the application, the delay in filing the appeal had been explained. The High Court is of the view that the explanation offered in filing the appeal belatedly, is not satisfactorily explained. Accordingly, it has declined to entertain the appeal. Yet, again has also found that there is no merit in the appeal.

3) We have heard learned counsel for the parties to the lis.

4) We have carefully perused the order passed by the High Court and the explanation offered by the appellants in the affidavit filed for condonation of delay in filing the appeal belatedly. In the facts and circumstances of the case, we are of the opinion, the High Court should have condoned the delay in filing the appeal and should have decided the appeal on merits. Furthermore, this Court has consistently held, that, if, for the reason, the appeal is dismissed on the ground of delay, the court need not express its opinion on the merits of the appeal. In the instant case, the High Court while declining to entertain the appeal on the ground of delay, has also

made passing observation on the merits of the appeal, which, in our opinion ought not to have been done by the High Court.

5) In the aforesaid view of the matter, we cannot sustain the impugned order.

6) In the result, the appeal is allowed, the impugned order passed by the High Court is set aside. We condone the delay in filing the Letters Patent Appeal subject to the appellants paying cost of Rs. 5,000/- to the respondent within six weeks from today. We request the High Court to decide the Letters Patent Appeal on merits as expeditiously as possible at any rate within six months from the date of receipt of copy of this Court's order.

.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]

**New Delhi,
February 23, 2009.**