

SUPREME COURT OF INDIA

State of Bihar

Vs.

Nilamani Jha

C.A.No. 4825 of 2000

(M. Jagannadha Rao and Doraiswamy Raju, JJ.)

28.08.2000

ORDER

1. Delay condoned.

2. Leave granted.

3. The learned single Judge dismissed the First Appeal filed by the State of Bihar on the ground that the State had not paid the costs imposed by the Court as condition precedent for condonation of delay in the filing of the appeal. The appeal was, therefore, dismissed by the learned single Judge on 25-8-98. The State of Bihar has filed an appeal against the order of the learned single Judge. It appears that the State had also preferred an appeal before the Division Bench which was dismissed on the ground that it was not maintainable.

4. Learned counsel for the respondent initially took objection that no SLP had been preferred

against the order of the Division Bench. We are of the view that even though the State had not preferred an SLP against the order of the Divisional Bench, it is not precluded from filing an SLP against the order of learned single Judge inasmuch as the Division Bench had accepted the contention of the respondent that the appeal was not maintainable.

5. So far as the non-payment of cost of Rs. 500/- is concerned, the same was on the ground of the mistake by the counsel in not noticing the condition imposed in the order and in not communicating it to the State of Bihar. We are of the view, that the learned single Judge ought to have condoned the delay. The State of Bihar is now granted four weeks time for the payment of Rs. 500/- from today. If the amount is so deposited, within aforementioned time, the appeal shall stand restored to the learned single Judge for disposal in accordance with law. The appeal is allowed and is disposed of accordingly. No costs.

Appeal allowed.