

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.356 of 2013

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Jaimala Devi W/O Sri Kubair Shazma R/O Village- Utter Maheshwari, P.O.
& P.S.- Jogbani, District- Araria.

.... Petitioner/s

Versus

Chandrawati Devi W/O Sri Shiv Bachan Roy @ Yadav R/O Village- Utter
Maheshwari, P.O. & P.S.- Jogbani, District- Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sushanta Kumar Das

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

3 23-11-2015

Heard Mr. Sushanta Kumar Das, the learned counsel

for the petitioner. Nobody has appeared on behalf of the
respondent even in spite of the service of notice.

The present application has been filed for quashing
the impugned order by which the learned court below has
dismissed the petition filed by the petitioner under Order 9 Rule 4
C.P.C. for restoration of the suit.

The facts, in a narrow compass, are that the T.S. No.
265 of 2008 was dismissed for default for non-appearance of
either of the parties on 18.08.2011. From the order dated
18.08.2011 (Annexure-2), it transpires that the suit was dismissed
under the provision of Order 9 Rule 3 C.P.C. Thereafter, a petition
was filed on 09.09.2011 wherein it was stated that the son of the



plaintiff who was making pairvi in the suit met an accident and in that circumstance he could neither appear before the court nor could inform his lawyer. The learned court below has rejected the Misc. Case No. 21 of 2011 which has been initiated on the basis of the restoration petition filed by the petitioner on the sole ground that there is discrepancy in the evidence with regard to the explanation furnished on behalf of the petitioner. It has been elaborated in the order that the son of the petitioner has stated in the restoration application that he met an accident on 18.08.2011 while coming to the court but he has deposed that he had hit kids by his vehicle while coming to the court on that day.

The learned counsel for the petitioner has submitted that the discrepancy as pointed out by the learned court below for rejection of the prayer for restoration is unfounded and unreasonable. It has been canvassed that the learned court below has failed to appreciate that there is no discrepancy at all in the pleading and evidence on behalf of the petitioner relating to the accident of the son of the petitioner.

After careful consideration of the matter and perusal of the impugned order, it is manifest that the sole explanation by the petitioner for non-appearance before the court on 18.08.2011 is that the son of the petitioner who was making pairvi in the case on

behalf of the petitioner met an accident on 18.08.2011 while coming to the court. It is apparent that during the course of his deposition the son of the petitioner has explained and elaborated the manner of accident that he had hit a kid by his vehicle. This clearly shows that the accident had occurred on that day, and there is no discrepancy in the pleading and proof. In this view of the matter, the order passed by the learned court below rejecting the Misc. Case No. 21 of 2011 turning down the prayer on behalf of the plaintiff-petitioner for restoration of T.S. No. 265 of 2008 cannot be sustained.

Accordingly, this writ application is allowed and the impugned order is set aside. The T.S. No. 265 of 2008 is restored to its original file. The learned court below is directed to proceed expeditiously for the disposal of the suit.

(V. Nath, J)

Devendra/-

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