

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.411 of 2013**

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1. Triloki Prasad @ Triloki Nath Gupta S/O Late Lakshman Master Resident Of Mohalla- Purani Bajaji, Police Station- Siwan (Town), District- Siwan, At Present Resident Of Mohalla- Telhatta Bazar, Siwan, Police Station- Siwan (T), District- Siwan.
  2. Ram Kumari Devi @ Raj Kumari Devi W/O Late Lakshman Master Resident Of Mohalla- Purani Bajaji, Police Station- Siwan (Town), District- Siwan, At Present Resident Of Mohalla- Telhatta Bazar, Siwan, Police Station- Siwan (T), District- Siwan.
  3. Tara Devi D/O Late Lakshman Master Resident Of Mohalla- Purani Bajaji, Police Station- Siwan (Town), District- Siwan, At Present Resident Of Mohalla- Telhatta Bazar, Siwan, Police Station- Siwan (T), District- Siwan.
  4. Krishna Murari Gupta @ Krishna Prasad S/O Late Lakshman Master Resident Of Mohalla- Purani Bajaji, Police Station- Siwan (Town), District- Siwan, At Present Resident Of Mohalla- Telhatta Bazar, Siwan, Police Station- Siwan (T), District- Siwan.

.... .... Appellant/s

Versus

1. Md. Ali S/O Md. Ismail Resident Of Kaswa Siwan Sheikh Mohalla, Police Station- Siwan (Town), Post Office- Siwan, District- Siwan.
2. Shahabuddin S/O Md. Ismail Resident Of Kaswa Siwan Sheikh Mohalla, Police Station- Siwan (Town), Post Office- Siwan, District- Siwan.
3. Serajuddin S/O Md. Ismail Resident Of Kaswa Siwan Sheikh Mohalla, Police Station- Siwan (Town), Post Office- Siwan, District- Siwan.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Bhavesh Kumar, Adv.  
For the Respondent/s : Mr. S.A.Alam, Adv.  
Ms. Lubna Naaz, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL ORDER**

8      31-08-2015                      In terms of order dated 7<sup>th</sup> August 2015, the appellants have paid upto-date rent to the respondents that has been confirmed by the counsel for the respondents.

In the present case the appellants are challenging the order dated 5<sup>th</sup> June 2013 passed in Misc. Case No.26 of 2010

which was dismissed on account of having knowledge of Appeal No. 2 of 2006 having deliberately left which led to dismissal of the case for non-prosecution.

It appears from the record that Eviction Suit No.2 of 1999 was filed by the respondents against the appellants for evicting them from the disputed premises. The judgment and decree was passed in favour of respondents which was challenged before this Court in Eviction Appeal No 616 of 2001. At the same time the respondents filed Execution Case No.7 of 2001. On account of enhancement of pecuniary jurisdiction this Court remitted back the case to the court below which was registered as Eviction Appeal No.2 of 2006 and that was dismissed for default for non-prosecution.

Case of appellants is that they could not know about the remittance of the appeal nor received any notice, could know about dismissal of appeal when they received notice from the executing court, only then they filed Misc. Case No. 26 of 2010.

In support of his contention, appellants examined two witnesses, namely, Lauki Prasad Gupta, A.W.1 and his brother as A.W.2. Both of them said that they did not have knowledge about remittance of the case and they could know about its dismissal when got notice from the executing court, submission was

challenged stating they did have full knowledge about remittance of the case but purposely they did not take any action which led to dismissal of the case.

From the record it appears that the District Judge after remand, admittedly did not issue notice upon the appellants and he has taken a plea that he could know about the remittance and dismissal of the case only through executing court.

This Court is of the view for the ends of justice it would be proper that the order refusing to restore the appeal date d 5<sup>th</sup> June 2013 is set aside, the matter is remanded back to the court below to decide the case on its own merit. However, parties are directed to co-operate the disposal of the appeal.

As it is an appeal of the year 2006, the court below will decide the same as early as possible, preferably within six months. Both the parties are directed to appear before the court below on 3<sup>rd</sup> October 2015. If the appellants would fail to give rent to the appellants, the court below will pass appropriate order.

With the above observation/directions, this appeal is allowed.

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**(Shivaji Pandey, J)**