

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.828 of 2010

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Md. Aftab Alam

.... Appellant/s

Versus

Sri Mahendra Singh

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Radh Mohan Pandey

For the Respondent/s : Mr. M/S Binay Kr. Pandey

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

25 22-05-2015

It appears that due to inadvertence, on 13.05.2015

order of another case was recorded in the case. Hence order dated
13.5.2015 is modified to read as follows:-

“This appeal is preferred against the order dated 4th
September 2008 passed in Misc. Case No.6 of 2008 whereby and
whereunder Sub Judge, Patna has rejected the prayer on the
ground of limitation at the time of admission itself.

Counsel for the appellants submits that in terms of
Section 123 of the Limitation Act, parties are required to move
before the court within 30 days from the date of the order or if
there is no knowledge of the proceeding, within 30 days from the
date of knowledge.

Counsel for the appellants submits that in the
application specific plea has been taken that the appellants had no
knowledge about the proceeding and when they could know about

the outcome, within 30 days from the date of knowledge, they approached the court.

Counsel for the respondents submits that appellants had knowledge about the proceeding but purposely they remained absent, so 30 days should be counted from the date of order. It appears that the dispute is about the knowledge of the proceeding. It is a matter of fact, parties can prove their respective facts by leading evidence and the court below will have liberty to arrive to a finding about the knowledge of proceeding in course of hearing of the Misc. case. In such view of the matter, the order impugned is quashed and the matter is remanded back to the court below. The parties are allowed to lead their respective evidence with regard to having knowledge about the proceeding and the court below, on the basis of materials on record, will pass order in accordance with law.

Accordingly, this appeal is allowed.”

(Shivaji Pandey, J)

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