

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.901 of 2015

In
C. REV. 363 of 2013

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Ajay Mishra Son of Late Ripusudan Mishra, Resident of Village -
Gobraura, Police Station - Lauriya, District- West Champaran at Bettiah.

.... Petitioner/s

Versus

1. Braj Kumar Mishra
2. Bijendra Mishra Both Sons of Late Madhusudan Mishra,
3. Rabindra Mishra Son of Janaki Mishra, All residents of village -
Gobraura, Police Station - Lauriya, District - West Champaran at
Bettiah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ambuj Nayan Chaubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 02-09-2015 Heard Mr. K.N. Choubey, the learned senior counsel
appearing on behalf of the petitioner.

This interlocutory application (I.A. No. 6675 of
2015) has been filed for condonation of delay in filing the
restoration application praying for restoration of Civil Review No.
363 of 2013 to its original file.

From the records, it appears that F.A. No. 612 of
1995 was filed by the appellant Madhusudan Mishra and
respondents who were impleaded in that appeal were respondent
no. 1 Ripusudan Mishra, respondent no. 2, Narmadeshwar Mishra,
respondent no. 3 Ravindra Mishra besides other respondent nos. 4



to 9 who have been subsequently impleaded as party-respondents. It further appears that by order dated 19.07.2013, the First Appeal No. 612 of 1995 was dismissed as incompetent. It would be seemly to take into notice that the First Appeal No. 612 of 1995 was filed against the judgment and decree passed in Title Suit No. 01 of 1991/05 of 1995 which was dismissed on contest by the judgment and decree dated 31.05.1995. It does not appear that the appellant of First Appeal No. 612 of 1995 being aggrieved had filed any petition for review/recall of the order of dismissal of the said first appeal.

However, the son of respondent no. 1 Ripusudan Mishra filed Civil Review No. 363 of 2013 praying for review of the judgment and order by which the First Appeal No. 612 of 1995 was dismissed. The Civil Review application, however, was also dismissed for default for non-compliance of the peremptory order. Thereafter, M.J.C. No. 901 of 2015 has been filed for restoration of the civil review application. The interlocutory application (I.A. No. 6675 of 2015 has been filed for condonation of delay in filing the restoration application.

During the course of hearing of the aforesaid interlocutory application Mr. Choubey, the learned counsel for the petitioner has failed to satisfy this Court as to how a review

application would be maintainable at the instance of the respondent against the dismissal of the first appeal wherein there is no direction to the prejudice of the respondents. It has not been disputed that the present petitioner is the son of the deceased respondent no. 1 Ripusudan Mishra of First Appeal No. 612 of 1995. There is no averment either in the review application or in the restoration application that as to how the present petitioner would be aggrieved by the dismissal of the first appeal.

In this view of the matter, this Court finds that the Civil Review No. 363 of 2013 was itself misconceived and the subsequent M.J.C. No. 901 of 2015 for its restoration of the said review application is also a futile exercise. It is, accordingly, held that the entire proceeding from filing of the civil review application up to the restoration application along with the prayer for condonation of delay in filing of the restoration application is misconceived.

For the aforesaid reasons, this M.J.C. No. 901 of 2015 is also dismissed as misconceived.

(V. Nath, J)

Devendra/-

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