

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.4997 of 2013

In
SA 320 of 2001

- =====
1. Dasai Sahani.(Deceased), son of Maharaj Sahani, Resident of Village-Bardaha Tola, Maniari, P.S.-Nautan, P.O.-Jhakhara, District-West Champaran.
 2. Dhanai Mahto, Son of Bhola Mahto, resident of Village-Marushantola Chhotta Tola, P.S.-Nautan, P.O.-Jhakhara, District-West Champaran.
- Appellants-Petitioners.**

Versus

1. Mostt. Manti Widow of late Shyam Lal Sah, R/o Village-Maruaaha, P.S.-Nautan, P.O.-Jhakhara, District-West Champaran.
 2. Madan Sah, Son of Dasai Sah, R/o Village- Maruaaha, P.S.-Nautan, P.O.-Jhakhara, District-West Champaran.
 3. Hari Shankar Sah @ Abhilakh Sah.
 4. Dinesh Sah @ Umesh Sah.
- Both opp.party nos. 3 and 4 are minor sons of Madan Sah under the guardianship of their father and well-wisher Madan Sah.
All resident of Village- Maruaaha, P.S.-Nautan, P.O.-Jhakhara, District-West Champaran
- Respondents-Opp.Parties.**
5. Vakil Sahni, Son of Late Dasai Sahni, R/o Village- Bardaha Tola, Maniari, P.S.-Nautan, P.O.-Jhakhara, District-West Champaran.
- (Heirs of appellant no.1)-Proforma opp.parties.**
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Appearance :

For the Petitioner/s : Mr. Usha Rai
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

3 11-02-2015 The interlocutory application (I.A.No.2845/2014) has been filed for condonation of delay in filing this restoration application. From the office report it appears that the limitation expired on 16.05.2005.

The appellants were the plaintiffs in the suit and have filed this second appeal against the judgment and decree of affirmance. By order dated 15.05.2002 the appellants were allowed to comply the earlier order dated 18.04.2002 by next day but they

failed to comply the same resulting in the dismissal of the second appeal in default for non-compliance. Thereafter, this restoration application has been filed on 20.09.2013 praying for restoration of the said second appeal. The I.A.No.2845/2014 has been filed for condonation of delay in filing the restoration application.

The averments made in the limitation petition shows that the petitioners came to know about the dismissal of the appeal on 10.07.2013 through rumour in the village and thereafter they came to enquire about the status of the said appeal and gathered information that their counsel Mr Devendra Pratap Singh had shifted his practice to the Supreme Court of India much earlier. It has been further averred that the petitioners, on advice, went to Delhi to meet the said advocate and obtained 'no objection' and then after inspection of the records through another advocate filed this restoration application. It has also been averred that the restoration application has been filed within 30 days from the date of knowledge of the dismissal of the said appeal.

From the perusal of the restoration application it transpires that the same averment has been made in the said restoration application. However, the said restoration application is not supported by the affidavit of any of the two petitioners in the restoration application. It further transpires that the details of

gathering the knowledge on 10.07.2013 has also not been mentioned in the limitation application as well as in the restoration application. It has, nowhere, been averred as to what prevented the petitioners who were plaintiff-appellants to make enquiry regarding status of the case right from 2005 up to 2013. The Court, therefore, is not satisfied with the explanation assigned by the petitioners in the restoration application for condonation of the long delay of nearly 8 years in preferring this restoration application.

As such, this Court holds that there is no sufficient cause for condonation of delay in filing this restoration application. The interlocutory application (I.A.No.2845/2014) is accordingly dismissed. Consequently, the restoration application is also dismissed.

(V. Nath, J)

Nitesh/-

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