

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4868 of 2016

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Nagendra Rai & Ors

.... Petitioner/s

Versus

Bibi Roshan Arra & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satya Ranjan Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 20-07-2016

After some argument, learned counsel, Mr. K.P. Rai, for the petitioners seeks permission to withdraw this writ application on the ground that, in fact, the order passed by the trial court in miscellaneous case filed by the petitioners under Order 21 Rules 97 and 98 C.P.C. is a decree within the meaning of said term as provided under Order 21 Rule 103 C.P.C. Therefore, title appeal should have been filed before the court below. However, original title appeal was filed in the court below under Section 96 of the Code of Civil Procedure. Subsequently, the provision was deleted and the appeal was registered as appeal under Order 21 Rule 103 C.P.C. only. According to learned counsel in fact, in view of the provision as contained in Order 21 Rule 103 C.P.C. order was appealable as a decree.

In such circumstances, learned counsel for the petitioners submitted that he may be permitted to file regular

appeal before the lower appellate court as the valuation of the subject matter is less than Rs. 10,00,000/-. However, learned counsel submitted that he was pursuing the miscellaneous appeal bonafidely, therefore, the appeal may be filed will be barred by law of limitation.

In view of the submission and in view of the finding of the lower appellate court that the miscellaneous appeal is not maintainable, the petitioners are permitted to file title appeal under Section 96, as prayed for, and is also permitted to file application for condonation of delay and if such appeal and application are filed by the petitioners, the court below shall consider the same and pass necessary order according to law. Accordingly, this writ application is dismissed as withdrawn with the aforesaid liberty.

(Mungeshwar Sahoo, J)

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