

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1418 of 2016**

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Deo Narain Choudhary

.... Appellant/s

Versus

Sri Ramjeevan Paswan

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Uday Shankar Choudhary

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 20-12-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated 23.07.2016 passed by the learned Addl. District Judge VI, Samastipur in Misc. Case No.11 of 2011.

It appears that Title Appeal No.20 of 1999 filed by the respondent against the Judgment and Decree passed in Title Suit No.35 of 1999 was dismissed for default. The respondent then filed Misc. case praying for restoration of Title Appeal on the ground mentioned in the Misc. case. The petitioners appeared and has filed objection. The Court below examined witnesses in support of the fact alleged by the parties and on the basis of discussion of the evidences by the impugned order clearly recorded a finding that “on perusal of the evidences produced on behalf of the both parties I come to the conclusion that the petitioner has been able to prove that he was prevented by sufficient cause that his illness to attend the Court on 18.05.2011 resulting in dismissal of Title Appeal No.20 of 1999.



This finding recorded by the Court below is based on evidence and, therefore it is a finding of fact.

The Hon'ble Supreme Court in the case of *Jai Singh Vs. Municipal Corporation of Delhi (2010) 9 SCC 385* has held that 'the High Court cannot lightly or liberally act as an appellate Court and re-appreciate the evidence. Generally, it cannot substitute its own conclusion for the conclusions reached by the Courts below. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interfered.' In the present case at our hand that title Appeal filed by the respondent has only been restored to its original file.

Now, therefore, in view of the decision of the Hon'ble Supreme Court, this Court in exercise of supervisory jurisdiction cannot lightly substitute its own conclusion for the purpose of supervising the order passed by the Court. Thus, I find no reason to interfere with the impugned order.

Accordingly, this Civil Misc. application is dismissed. The petitioner may pray before the Court below for expeditious disposal.

(Mungeshwar Sahoo, J)

Sanjeev/-

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