

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.3 of 2016**

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Sudama Singh & Ors

.... Appellant/s

Versus

Surajdeo Sao & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bal Bhushan Choudhary

For the Respondent/s : Mr.

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

2 29-07-2016

Heard learned counsel, Mr. R.K.P. Singh for the
petitioners.

2. By the impugned order dated 23.02.2016, the learned
District Judge, Jehanabad in T.A. No. 04 of 2016 rejected the
limitation application and dismissed the title appeal at the stage of
admission itself.

3. The Hon'ble Supreme Court in the case of *Shyam
Sunder Sharma Vs. Pannala Jaiswal and Ors.* reported in *AIR
2005 SC 226* has held that an appeal filed along with an
application for condoning the delay in filing the appeal, when
dismissed on the refusal to condone the delay is nevertheless a
decision in the appeal. It appears that in that case the earlier
decision of the Supreme Court in the case *Ratan Singh Vs. Vijay
Singh* reported in *2001 (1) SCC 469* was cited, wherein it was
held that dismissal of appeal on rejection of an application for

condonation of delay would not amount to a decree. At paragraph-12, the Hon'ble Supreme Court held that we must point out with respect to that decision that the decision of this Court in *M/S. Mela Ram and Sons and Shedan Singh (supra)* were not brought to the notice of their lordships. The principle laid down by a three Judges Bench of this Court in *M/S/ Mela Ram and Sons (supra)* and that stated in *Sheodan Singh* was, thus, not noticed and the view expressed by the two Judges Bench, cannot be accepted as laying down the correct law. The two Judges Bench decision in the case of *Ratan Singh Vs. Vijay Singh* has been specifically overruled by the Division Bench. Therefore, in my opinion, the order, whereby, the appeal has been dismissed as time barred, is a decree. As such, the petitioner, if so advised, may file appeal as provided in the Code of Civil Procedure. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed as not maintainable.

(Mungeshwar Sahoo, J)

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