

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2691 of 2014

In
SA 373 of 2008

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1. Mahanath Yugeshwar Das son of Late Khaderan Das
 2. Raj Kumar Yadav son of Yogeshwar Das
 3. Santosh Yadav son of Yugeshwar Das
 4. Shiv Shankar Kumar Yadav son of Yugeshwar Das All are resident of village - Grihinda, P.S. and District – Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mukesh Kumar son of Late Radhey Yadav
3. Ashok Kumar son of Nand Kishore Yadav All are resident of village - Grihinda, P.S. and District - Sheikhpura
4. Masir Uddin son of Sabiruddin resident of village - Katnipur, P.S. and District – Sheikhpura.
5. Shankar Yadav son of Doman Yadav resident of village - Grihinda, P.S. and District - Sheikhpura
6. Abu Fateh son of M.D. Idrish Resident of village - Katnikal, P.S. and District – Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 13-01-2016

Heard the learned counsel for the petitioners.

The restoration application has been filed for restoration of the Second Appeal No. 373 of 2008 which stood dismissed for non-compliance of the order dated 26.09.2011. This restoration application has been filed on 22.07.2014. From the



perusal of the order sheet of the second appeal, it transpires that on 05.08.2010 the prayer by the appellants for grant of two weeks time to remove the defects as pointed out by the stamp reporter was allowed. However, the appellants did not remove the defect nos. 2 to 10 in compliance to the direction as contained in the said order and thereafter on 26.09.2011 the prayer of the appellants to further grant two weeks time to remove those defects was allowed. The appellants again did not comply the said direction for removal of the defects. Consequent thereupon, the second appeal stood dismissed for default for non-compliance of the order dated 26.09.2011. It also appears from the records of the second appeal that the order of dismissal of the second appeal was communicated to the appellate court below.

The restoration application has been filed as stated above on 22.07.2014 and the statement has been made in paragraph-4 that the learned counsel for the petitioners could not appear on 26.09.2011 before this Court because the mother was seriously ill and suffering from paralysis. No explanation has been furnished for the long delay of nearly three years in filing the restoration petition. During the course of submission also, no cogent reason has been mentioned in this regard.

After considering the averments made in the

restoration application, the submission on behalf of the petitioners and the facts and circumstances of the case, it is transparent that the restoration application has been filed in a casual manner and a wrong statement of fact has also been made therein that the learned counsel for the petitioners did not appear on 26.09.2011 though from the said order it is manifest that the prayer was in fact made on behalf of the appellants for grant of two weeks time for removing the defects and the said prayer was granted. This appeal has been filed in the year 2008 and it further appears that a limitation petition (I.A. No. 404 of 2011) was also filed for condonation of delay in filing the said appeal. The casual approach of the appellant-petitioners in pursuing the second appeal as a result of which it remained pending for so many years is explicit. This Court thus does not find sufficient cause for restoring the second appeal, as prayed.

The restoration application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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