

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3792 of 2013

=====

Madan Kumar Choudhary S/O Parmeshwar Choudhary Resident Of
Mohalla- Sahjadpur Andar Kila, P.S- Town Hajipur, District- Vaishali

.... Petitioners.

Versus

1. Indu Kumari W/O Ranjit Kumar Choudhary Resident Of Mohalla-
Salha, P.S- Jandaha, District- Vaishali
2. Vishwanath Prasad Choudhary S/O Late Ramashish Choudhary Resident
Of Mohalla- Sahjadpur Andar Kila, P.S- Town Hajipur, District- Vaishali,
At Present 4/H/75 Bahadurpur Housing Colony, P.O- Lohia Nagar, P.S-
Agam Kuan, District- Patna.
3. Sheema Choudhary W/O Madan Kumar Choudhary Resident Of
Mohalla- Sahjadpur Andar Kila, P.S- Town Hajipur, District- Vaishali
4. Rajni Kumari D/O Ram Swaroop Mahto Resident Of Mohalla- Sahjadpur
Andar Kila, P.S- Town Hajipur, District- Vaishali

.... Respondents.

=====

Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Adv.
Mr. Alok Kumar Jha, Adv.

For the Respondent/s : Mr. Shashi Bhushan Kumar , Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

4 08-02-2016

Heard the learned counsel for the parties.

Questioning the legal sustainability of the
impugned order by which the learned court below has held that the
petition filed by the plaintiff-petitioner under Order 9 Rule 4
C.P.C. for restoration of the suit is not maintainable, as the suit has
been dismissed under Order 7 Rule 11 C.P.C., the present
application under Article 227 of the Constitution of India has been
filed.

The facts are not disputed by the parties that by



order dated 01.05.2007 the court directed the plaintiff to pay the deficit court fee stamp on the plaint. The said direction was not complied and ultimately on 12.01.2010 the learned court below granted the last opportunity to the plaintiff to pay the deficit court fee stamp with caution that the necessary orders would be passed in case of failure to deposit the deficit court fee stamp. The learned court below after taking into notice the fact that the plaintiff did not comply the earlier direction as contained in order dated 12.01.2010 and was also absent, has thus passed the order dismissing the suit. The plaintiff, thereafter, filed the petition under Order 9 Rule 4 C.P.C. for restoration of the suit. The learned court below by the impugned order has held that as the suit was dismissed for non-payment of deficit court fee stamp by the plaintiff, the order of dismissal would be deemed to be under the provisions of Order 7 Rule 11 C.P.C.

The learned counsel for the petitioner has submitted that the order dated 29.01.2010 also mentions the non-appearance of the plaintiff on the said date and therefore the dismissal would be deemed to be on the ground of non-appearance and not on the ground of non-payment of the deficit court fee stamp. It has, therefore, been canvassed that the impugned order holding the petition for restoration not maintainable is not

sustainable in law.

The learned counsel for the other side has supported the impugned order.

After perusal of the impugned order and consideration of the submissions, it is manifest that the suit has been filed in the year 2006 and thereafter by order dated 01.05.2007 the plaintiff was directed to deposit the deficit court fee stamp. As the said direction was not complied for long three years, the learned court below finally passed the order on 12.01.2010 directing the plaintiff to deposit the deficit court fee stamp in compliance to the earlier direction and also cautioned to pass appropriate order in case of failure to comply the direction for deposit of deficit court fee stamp on 29.01.2010. The plaintiff neither appeared on the said date nor complied the said direction and consequently the order was passed dismissing the suit. The learned court below has taken into notice the aforesaid facts and circumstances of the case and thereafter has come to the conclusion that the dismissal of the suit was under the provisions of Order 7 Rule 11 C.P.C. and not under the provisions of Order 9 C.P.C. and therefore the petition filed under Order 9 Rule 4 C.P.C. for restoration of the suit was not maintainable.

In the background of these facts, this Court is

not persuaded to hold that the order is illegal or suffers from jurisdictional error only because the non-appearance of the plaintiff on 29.01.2010 has also been mentioned in the order besides the fact of non-deposit of the deficit court fee stamp.

In this view of the matter, this Court does not find any merit in this application, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--