

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10589 of 2014

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Deo Kumar Bhagat S/o Late Ramautar Bhagat Resident of Mohania, P.S. Banmankhi, District Purnia.

.... Petitioner/s

Versus

1. The State of Bihar through D.M., Murnea.
2. The S.D.O., Banmankhi, District Purnia.
3. The Circle Officer, Banmankhi, District Purnia.
4. Bhantu Sharma S/o Late Jamun Sharma Resident of Village Makhnaha, Ward No. 13, P.O. Haripur Modi, P.S. Banmankhi, District Purnia.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Bhagat, Adv.

For the Respondent No.1 to 3 : Mr. Vivek Prasad, G.P. 7

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 16-08-2016 Heard the learned counsel appearing on behalf of the petitioner and the learned G.P. 7 appearing on behalf of the respondent no. 1 to 3.

The petitioner is aggrieved by the order dated 10.09.2011 passed in Appeal Case No. 3 of 2009-10 by the S.D.O., Banmankhi whereby the aforesaid appeal filed on behalf of the petitioner purportedly under Section 48D of The Bihar Tenancy Act, 1885 (in short B.T. Act) and the Rules framed thereunder has been rejected on the ground of long absence of the petitioner.

The learned G.P. 7 appearing on behalf of the respondent no. 1 to 3, at the very outset, submits that the petitioner has an alternative remedy and he ought to have filed a petition for restoration of the aforesaid appeal before the respondent S.D.O. Banmankhi explaining the long absence of the petitioner and also explaining the reasons for his non-appearance on the date fixed.

The learned counsel appearing on behalf of the

petitioner, by referring to the averments made in paragraph 9 of the writ petition submits that in view of death of the previous lawyer of the petitioner, a petition for restoration vide Annexure-6 was filed on behalf of the petitioner by another lawyer, but that was not entertained by the respondent S.D.O. Therefore, the petitioner has approached this Court in the present proceeding.

Taking into consideration the aforesaid factual matrices, the present writ petition is disposed of with a liberty to the petitioner to file a fresh restoration petition before the respondent S.D.O., Banmankhi seeking restoration of aforesaid Appeal case No. 3 of 2009-10 within a period of four weeks from today with a certified copy of the present order.

If such a petition is filed on behalf of the petitioner, in the manner indicated above, then the respondent S.D.O., Banmankhi shall entertain that petition and shall consider the case of the petitioner for restoration of Appeal Case No. 3 of 2009-10 strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to all concerned including the petitioner and the respondent no.4, besides others, if any.

It is clarified that this Court has not gone into the merits of claims raised on behalf of the petitioner with respect to the lands in question and this is left to be decided by the respondent S.D.O., Banmankhi strictly in accordance with law.

The writ petition stands finally disposed of with above observations/ directions.

(Birendra Prasad Verma, J)

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