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IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 51734 of 2016

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Kamlesh Yadav, Son of Shri Mukti Yadav, Resident of Village - Chainpur, P.S. - Adapur, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Manager, Bihar State Food & Civil Supplies Corporation Limited, East Champaran, Motihari.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Suraj Samdarshi, Advocate
For the State : Mr. Md. Arif, A.P.P.
For the B.S.F.C. : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL ORDER

2 30-11-2016 Heard learned counsel for the parties.

The present application has been filed seeking restoration of Cr. Misc. No. 44753 of 2015, which was dismissed for non prosecution on 05.09.2016.

The Court on 05.09.2016 had passed the following order in Cr. Misc. No. 44753 of 2015:

> *'Nobody appears on behalf of the petitioner. Mr. Shailendra Kumar Singh, learned counsel is present on behalf of opposite party no. 2.*
>
> *In view of the aforesaid, the*

application stands dismissed for non prosecution.

The interim protection granted by order dated 13.10.2015, stands vacated'.

As per the submissions of learned counsel for the petitioner and the averments made in the present application, the ground taken is that the counsel for the petitioner was arguing the matter before another Court and a few matters were adjourned as a result of which the case was called out and the junior counsel to the advocate on record by the time could reach the Court room the matter was dismissed for non prosecution.

From the aforesaid, it is amply clear that learned counsel for the petitioner was aware of the order of dismissal for non prosecution on 05.09.2016 itself.

Thus, filing of the present application seeking restoration on 25.11.2016, that is, after two months twenty days, is clearly unjustifiable and inexplicable. The matter becomes worse, as the petitioner had been granted interim protection by order dated 13.10.2015, which also stood vacated in terms of the order dated 05.09.2016. Thus, there was greater urgency to file the restoration application moreso, when learned counsel was aware of such dismissal on 05.09.2016 itself.

For the reasons aforesaid, the Court does not find that sufficient ground has been shown for allowing the present application.

Accordingly, the same stands dismissed.

(Ahsanuddin Amanullah, J.)

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