

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3523 of 2015

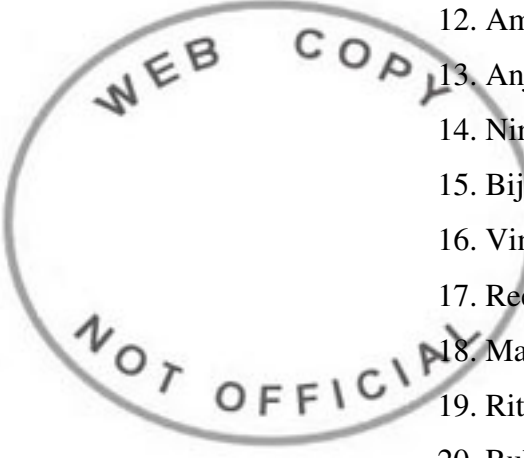
In
SA 241 of 2008

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1. Ramjee Sharma @ Sanjay Kumar Sharma.
 2. Laxman Sharma @ Santosh Sharma both Son of Late Hari Sharma.
 3. Ramawati Devi.
 4. Parwati Devi.
 5. Janki Devi.
 6. Jashoda Devi.
 7. Kaikeyee Devi.
 8. Sumitra Devi.
 9. Urmila Devi.
 10. Rukmina Devi all Daughter of Late Hari Sharma.
 11. Bimla Devi @ Bimla Kuer Wife of Lallan Mistri.
 12. Nandu Sharma Son of Late Mahadeo Sharma All Resident of Village - Singhi, P.S.- Bhabhua at present Bhabhua Ward No. 1, P.O. & P.s.- Bhabhua, District - Rohtas at present Kaimur at Bhabua.
 13. Shyam Rathi Devi @ Shyama Devi Wife of Ramadhar Sharma.
 14. Sharda Devi Wife of Shio Adhar Sharma Both Resident of Village - Muthani, P.S.- Mohania, District - Rohtas at present - Kaimur at Bhabua
 15. Deena Nath Sharma Son of Banarsi Sharma
 16. Kaushalya Devi Daughter of Banarsi Sharma Both Resident of Village - Mohania, P.S.- Mohania, District - Rohtas at present Kaimur at Bhabhua.

.... Petitioner/s

Versus

1. Sudha Agrawal Wife of Bharat Bhushan.
2. Smt. Nilam Agrawal Wife of Alokya Narayan Agrawal.
3. Smt. Sabita Devi Daughter of Nalini Kant Agrawal.
4. Smt. Mandevi Agrawal Wife of Ravi Agrawal.
5. Uma Kant Agrawal Son of Baij Nath Prasad Agrawal
6. Pakashwati Kuer Wife of Kamla Kant Agrawal
7. Alok Kumar Agrawal.
8. Ajay Kumar Agrawal.
9. Amar Kumar Agrawal all Son of Kamla Kant Agrawal

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10. Archana Agrawal.
 11. Abha Agrawal.
 12. Amita Agrawal.
 13. Anjana Agrawal all daughter of late Kamla Kant.
 14. Nirmal Kant Agrawal.
 15. Bijay Kant Agrawal.
 16. Vinod Kant Agrawal all Son of late Lakhi Prasad Agrawal
 17. Reena Agrawal Daughter of Lakhi Prasad Agrawal
 18. Mamta Agrawal Wife of Late Sri Kant Agrawal
 19. Ritu Agrawal minor
 20. Rubi Agrawal minor
 21. Ravi Agrawal Son of Leela Agrawal
 22. Shashi Bhushan Agrawal Son of Lala Agrawal
 23. Prema Devi.
 24. Sushila Devi.
 25. Vina Agrawal all daughter of late Lakhi Prasad Agrawal All Resident of
Bhabua Town, Ward No. 3, P.S. & P.O.- Bhabua, District - Rohtas at
present Kaimur at Bhabua.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyendra Pandey
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

2 24-02-2016

Heard the learned counsel for the petitioners.

This application has been filed for restoration of the
Second Appeal No. 241 of 2008 to its original position.

It appears from the order sheet of the second appeal
dated 17.09.2008 that the appellants were allowed six weeks time
to remove the defects as pointed out by the stamp reporter. In view
of the office report regarding non-compliance of the said order, by



order dated 11.01.2012 the prayer on behalf of the appellants for grant of two weeks time to comply the direction as contained in the order dated 17.09.2008 was allowed. However, the appellants did not comply the direction as contained in the order dated 17.09.2008 even thereafter within the time limit by the court. It further appears that the present restoration application has been filed on 22.12.2015 praying for restoration of the second appeal which stood dismissed for non-compliance of the order of this Court.

The learned counsel for the petitioner has submitted that the appellants are not at fault rather the mistake was committed by the counsel engaged by the appellants. It has also been further submitted by the learned counsel who has appeared on behalf of the petitioners that he was not the counsel at the previous stage when the earlier order was passed. From the averments made in the restoration application, it appears from paragraph-8 that an explanation has been furnished that due to dislocation of the file and forgetfulness, the previous counsel could not comply the directions in the order dated 17.09.2008. It appears from the record that another Vakalatnama was filed on behalf of the appellants on 25.01.2011 by changing their previous advocate but even then no step was taken to comply the direction



dated 17.09.2008 which led the court to pass peremptory order on 11.01.2012. However, no steps were taken on behalf of the appellants for compliance of the order dated 11.01.2012 which led to the consequent dismissal for default of the appeal. The matter did not rest there when eventually another Vakalatnama on behalf of the appellants engaging another counsel was filed on 21.11.2014 much after the dismissal of the appeal. But even thereafter no step for restoration appears to have been taken promptly. The present restoration application has been filed only on 23.03.2015 with specious plea that the appellants were informed regarding the dismissal of the appeal on 18.03.2015 only. There is no averment that the appellants did not enquire or could not get the information regarding the non compliance of the order passed in the year 2008 even when the fresh Vakalatnama was filed on their behalf in the year 2011. There is also no averment that the appellant remained ignorant of the dismissal of their appeal even in the year 2014 when a fresh Vakalatnama was filed in the appeal on their behalf.

The sequitur of these facts leads to the inevitable inference of the casual manner and conduct of the appellants in pursuing this appeal as they remained vigilant in changing counsel by repeatedly filing fresh Vakalatnama but have come out with the

plea of ignorance of the order passed in the appeal in 2008 and 2012.

This Court is, therefore, not satisfied with the sufficiency of the explanation furnished on behalf of the appellants for non-compliance of the order and the restoration of the second appeal.

The restoration application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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