

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1397 of 2016**

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Sachitanand Mishra & Ors

.... Appellant/s

Versus

Surendra Mishra & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Awadhesh Kumar Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

2 20-12-2016

This application under Article 227 of the Constitution of India has been filed by the petitioners against the order dated 31.08.2016 passed by District Judge, Saran at Chapra in Title Appeal No.04 of 2016 whereby the title appeal has been dismissed consequently upon rejection of the limitation application.

The Division Bench of Patna High Court in **1996 (1) P.L.J.R. 494 (Ravneswar Thakur and Ors. Vs. Neeraj Kumar Thakur and Ors.)** has held that whatever be the nature of the order rejecting the memo of appeal and on whatsoever ground, whether for non-payment of court fee or failure to comply with a peremptory order, or limitation the effect of the rejection, is confirmation of the decision of the trial court. The decision of the trial court will be deemed to have been merged in the order of appellate court. If that be so, it will be difficult to hold that such orders do not have the force of decree but it will amount to decree



only if the decision was on merits. There must have been determination of the rights of the parties with regard to the matters in controversy in the suit. In view of the decision, if the trial court has set aside the suit on merit and the rights of the parties have been decided, the trial court judgment and decree merged in the order passed by the appellate court dismissing the appeal consequently on rejecting the limitation application. Therefore, according to this Division Bench decision it is a decree appealable under Section 100 CPC.

The Hon'ble Supreme Court in **A.I.R. 2005 Supreme Court 226 (Shyam Sunder Sarma Vs. Pannalal Jaiswal and others)** has held that an appeal filed along with an application for condonation of the delay in filing that appeal when dismissed on refusal to condone the delay is nevertheless a decision in the appeal. Therefore, it is a decree.

In view of the above settled proposition of law, this civil miscellaneous application is not maintainable. The petitioners may file appeal under Section 100 CPC. Accordingly, this civil miscellaneous application is dismissed.

Harish/-

(Mungeshwar Sahoo, J)

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