

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10462 of 2014

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1. Shiv Kumar Singhanian son of Late Babulal Singhanian.
 2. Rajiv Kumar Singhanian @ Rajib s/o Shiv K Umar Singhanian.
 3. Sharad Kumar Singhanian, son of Raj Kumar Singhanian.
 4. Sidharath Kumar Singhanian @ Sidharath son of Shiv Kumar Singhanian.
 5. Smt. Bimla Singhanian w/o Shiv Kumar Singhanian.

All are residents of Mohalla Sugagunj, P.S. Bhagalpur, District Bhagalpur.

....Plaintiffs-Applicant- Petitioner/s

Versus

1. The State of Bihar through Secretary Registration Department of Bihar, Patna.
2. Bindeshwari Thakur, s/o Late Shit Lal Thakur, resident of village Khajechak, P.S. Kharagpur, District Monghyr.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shyam Sunder Pandey, Adv
For the Respondent/s : Mr. GP9- D.B. SINGH

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-07-2016

Heard learned counsel appearing for the petitioner.

Questioning the legal sustainability of the impugned order by which the learned court below has dismissed the petition filed under Section 151 of the C.P.C by the plaintiff for restoration of the suit which was dismissed for default, the present application

has been filed under Section 227 of the Constitution of India.

Learned court below has held that the petition under Section 151 C.P.C for restoration of the suit is not maintainable. Mr. Sinha, learned counsel has canvassed before the court that the provision of Section 151 C.P.C can be invoked for restoration of the suit and in this regard the reliance has been placed on Full Bench decision of this Court in the case of ***Bajrang Rai and Ors vs Ismail Mian and Ors AIR 1978 Pat. 339***. It has, however, been accepted by the learned counsel that the plaintiff's suit was dismissed for default in presence of the defendant. It has also been accepted that no objection has been filed by the plaintiff-petitioner under the appropriate provisions of C.P.C.

After considering the submissions and perusal of the impugned order, this Court finds that the petition under Section 151 C.P.C was filed by the plaintiff-petitioner for restoration of the suit but the same has been held to be not maintainable by the learned court below and accordingly, dismissed on that score.

In view of the law laid down by the Apex Court in the case of ***Arjun Singh vs Mohindra Kumar AIR 1964 S.C. 993***, this Court is not inclined to align with the submission made on behalf of the petitioner that the petition under Section 151 C.P.C is maintainable even in presence of the specific provision under Order

9 Rule 7 C.P.C for restoration of the suit which has stood dismissed for default in presence of the defendant.

Accordingly, this Court does not find any illegality or material irregularity in the impugned order passed by the court below. This application is, accordingly, dismissed.

The petitioner however shall be at liberty to pursue the remedy available to him in accordance with law.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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