

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2259 of 2017

In
First Appeal No. 160 of 2004

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Mahanth Sadhu Sharan Das Chela

.... Petitioner/s

Versus

Sad Guru Kabir Ashram Dhelwa Gosain Daulatpur Chandi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Sharan Sharma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA

ORAL ORDER

4 22-11-2017

Heard the learned counsel for the petitioner.

The instant M.J.C. has been filed for restoration of First Appeal No. 160 of 2004 which was dismissed against respondent nos. 1, 2 and 4 to 11 due to non compliance of the peremptory order dated 20.04.2017.

It is submitted that Sri Shambhu Sharan Sharma, the conducting lawyer of the appellant has not turned up in the Court due to illness on 20.04.2017 and on that date the appellant was directed to comply the earlier order dated 05.02.2016 within two weeks, vide peremptory order dated 20.04.2017. The Lawazima Board has directed to file requisites for issuance of notice upon respondent nos. 1, 2 and 4 to 11. The appellant remained ignorant about the peremptory order resulting it was not complied with and as such the appeal was partially dismissed



against respondent nos. 1, 2 and 4 to 11 on 30.07.2017. The petitioner got the record inspected then learnt about partial dismissal of the appeal. Requisites for issuance of appeal notice against respondent nos. 1, 2 and 4 to 11 has already been filed on 31.07.2017. There is no willful or intentional laches on the part of the appellant and the default has occasioned due to bonafide mistake. The petitioner has a good case on merit and there is every chance of his success in the case and will suffer irreparable loss and injury if the appeal is not restored to its original file and number. In the interest of justice the order dated 20.04.2017 be recalled and First Appeal No. 160 of 2004 as against respondent nos. 1, 2 and 4 to 11 be restored to its original file.

Considering the submissions of the learned counsel for the petitioner and finding sufficient cause for not complying the order dated 20.04.2017 within the time, this restoration application is hereby allowed and First Appeal No. 160 of 2004, dismissed against respondent nos. 1, 2 and 4 to 11, is restored to its original file.

(Jitendra Mohan Sharma, J)

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