

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.176 of 2017

=====

Gopal Bohra, Son of Late Ram Prasad Bohra, Resident of Mohalla-Main Road, Nawada Town, P.O. + P.S. & District-Nawada

... .. Petitioner/s

Versus

1. Nagar Narishad, Nawada Through Its Executive officer, P.O., P.S. and District-Nawada
2. The State of Bihar through the Collector, Nawada
3. The Circle Officer, Nawada sadar, P.O., P.S. & District-Nawada

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ram Prawesh kumar
For the Respondent/s	:	Mr. Uday Shankar Sharan Singh

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 10-10-2017 Heard learned Counsel for the parties concerned.

The petitioner, in the present civil revision, seeks setting aside of an order, dated 09.08.2017, passed by learned District Judge, Nawada, whereby Misc. Case No. 35 of 2017, filed on behalf of the respondent no. 1 for restoration of Title Appeal No. 15 of 2015, has been allowed.

From the impugned order, it appears that against the judgment and decree, dated 26.05.2015/30.06.2015, passed by learned Sub Judge IV, Nawada, in Title Suit No. 145 of 2008, the said respondent had file Title Appeal No. 15 of 2015. The said appeal stood dismissed on 25.04.2016 at the stage of admission itself for non-filing of court fee and vakalatnama on behalf of the appellant. It appears that the said respondent was



wrongly advised to file another appeal after dismissal of Title Appeal No. 15 of 2015, which came to be registered as Title Appeal No. 11 of 2017. Title Appeal No. 11 of 2017 was dismissed as withdrawn as not maintainable with the observation that the said respondent had a right to file a petition for restoration of the said Title Appeal No. 15 of 2015. In pursuance of the said order, the respondent file Misc. Case No. 35 of 2017 for restoration of Title Appeal No. 15 of 2015, which has been allowed by the impugned order. The Court below, while ordering for restoration of Title Appeal No. 15 of 2015 has condoned the delay in preferring the application.

Learned counsel appearing on behalf of the petitioner, while assailing the impugned order, has submitted that the Court below has miserably failed to take into account the delay in filing the application for restoration. He also submits that the respondent could not furnish any plausible explanation for non-filing the court fees and the vakalatnama, resulting into dismissal of the Title Appeal No. 15 of 2015 for default. He has accordingly submitted that the order requires interference.

The power of revision of the High Court, under Section 115 of the Civil Procedure Code, 1908, can be exercised, as has been envisaged in the section itself, when it appears that the



Court below has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

In a case, where the Court below has allowed an application for restoration of an appeal, which stood dismissed for default, I do not find any reason to exercise my jurisdiction under Section 115 of the Civil Procedure Code, 1908.

This application has no merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

U	✓		
---	---	--	--

