

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7678 of 2014

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Md. Aasif Ekbal S/o Md. Abdul Gani Resident of Muhalla- Murgiyachak,
P.O/P.S/District- Khagaria.

.... Petitioner/s

Versus

1. Sogra Khatoon W/o Late Md. Asgar
2. Md. Istekhar Alam
3. Md. Sarbar Both Son of Late Asgar
4. Farida Khatoon W/o Md. Niraj daughter of Late Md. Asgar
5. Rehana Khatoon W/o Md. Akhtar and daughter of Late Md. Asgar
6. Kaushar Parveen W/o Md. Altamas and daughter if Late Md. Asgar
7. Md. Gulzar S/o Abbas All are resident of Muhalla- Murgiyachak, P.O/P.S/
District- Khagaria.
8. Md. Yusuf Ekbal S/o Md. Abdul Gani resident of Muhalla- Murgiyachak, P.S/
District- Khagaria.
9. Md. Gyasuddin
10. Md. Kaiyum Both Sons of Haider Mian
11. Most. Jamila Khatoon
12. Most. Safoost Khatoon Both daughters of Haider Mian
13. Mustakina W/o Late Moti all are resident of Muhalla- Murgiyachak,
P.O/P.S/District- Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Chandra, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-02-2017

Heard Mr. Rakesh Chandra, learned counsel for the
petitioner and Mr. Dronacharya, learned counsel for the respondents.

Questioning the legal acceptability of the impugned order



by which the learned court below has admitted the Misc. Case No. 01 of 2011 after condoning the delay and granting opportunity to the petitioner (who was opposite party) to raise all the objections at the time of hearing of the misc. case, the present application under Article 227 of the Constitution of India has been filed.

Learned counsel for the petitioner has submitted that the learned court below has committed material irregularity in condoning the delay only on the basis of the interest of justice and therefore, it has caused prejudice to the petitioner. It has been canvassed that the respondents have not succeeded in establishing sufficient cause and the fact and circumstances of the case itself disclose that the respondents have no such case. It has, therefore, been propounded that the learned court below ought not to have condoned the delay and admitted the miscellaneous case. Learned counsel for the petitioner has placed his reliance on the decision of the Apex Court in the case of **Balwant Singh Vs. Jagdish Singh, (2010) 8 SCC 685** and in the case of **Lanka Venkateswarlu Vs. State of Andhra Pradesh (2011) 4 SCC 363**. It has also been submitted that the title appeal which has been dismissed for default and the Misc. Case No. 01 of 2011 for restoration has remained pending for long for the reasons attributable to the respondents resulting in substantial loss to the petitioner.



Mr. Dronacharya, learned counsel for the respondents, at the out set, has submitted that the judgments relied upon on behalf of the petitioner have been rendered in a different setting of facts and are not attracted in the present facts and circumstances of the case. It has also been submitted that by the impugned order, the learned court below has only admitted the miscellaneous case after condoning the delay but has granted the opportunity to the petitioner (who was one of the opposite party in the miscellaneous case) to raise all objections at the time of hearing.

After considering the submissions and perusal of the materials on record including the impugned order, it is manifest that the learned court below has admitted the Miscellaneous Case No. 01 of 2011 which has been filed for restoration of the title appeal which was dismissed for default, after condonation of delay. It has been held by the learned court below that the delay is being condoned in the interest of justice but the opposite parties have been granted opportunity of hearing and raising all objections at the time of hearing of the miscellaneous case. On behalf of the petitioner, no provision of law or precedent has been brought to the notice of the court requiring the court to decide the issues at the threshold. It is apparent by the impugned order that the learned court below only admitted the miscellaneous case leaving all the issues to be decided at the time of



final hearing. In this backdrop, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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