

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3237 of 2016

In
First Appeal No. 165 of 1996

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Md. Muslim S/o Sahabjan Mian, Resident of village and P.O.- Rasulpur
Fateh, P.S.- Goraul, Distt- Vaishali.

.... Petitioner/s

Versus

1. Md. Ziauddin Son of Abdul Jabbar.
2. Md. Idris.
3. Md. Khalil.
4. Md. Nazir, all sons of Md. Jalaluddin.
5. Jabaida Khatoon
6. Johara Khatoon.
7. Noor Jahan Khatoon no. 5 to 7 are daughter of Jalaluddin the respondent
no. 2 all are resident of village + P.O. Rasulpur Fateh Goroul, P.S.
Goraul District-Vaishali.
8. Md. Serajuddin.
9. Md. Tajudur both Sons of Abdul Jabbar.
10. Md. Mazhar son of Most Mustkina Khatoon.
11. Aisa Khatoon
12. Samina Khatoon both daughter of Most. Mustikina Khatoon.
13. Sakina Khatoon W/o Manjoor Alam D/o Abdul Jabbar.
14. Mauda Khatoon W/o Abdul Haque D/o Abdul Jabbar.
15. Md. Jalaluddin son of late Abdul Jabbar all resident of village Rasulpur
Fateh Garjaul, P.S.- Goraul, P.O.- Rasulpur Fateh, District- Vaishali.
16. Md. Suleman Son of Ibrahim deceased. As per power of attorney dated
2.6.78 executed by Asgar Hussain
17. Bibi Sakeela Khatoon W/o Md. Moanif.
18. Gulam Mustafa S/o Md. Muslim. All resident of Village Rasulpur
Fateh, P.S.- Goroul, P.O.- Rasulpur Fateh, District- Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 10-05-2017 Heard learned counsel for the petitioner.

This application has been filed for restoration of F.A. No. 165 of 1996 which has been dismissed for default for non-compliance of the order dated 30.07.2012. This restoration application has been filed on 07.09.2016.

It appears from the records that F.A. No. 165 of 1996 was earlier also dismissed for default but it was restored by order dated 06.01.2003 in M.J.C. No. 2150 of 2002. The averments made in the restoration application demonstrate that in paragraph-6 the petitioner has come out with the case that after the demise of the earlier counsel, the petitioner engaged another counsel to file contempt petition in the First Appeal No. 165 of 1996 then he became aware of the dismissal of the said first appeal for default. It has also been stated that the certified copy of the order was obtained thereafter. It is, however, surprising that the petitioner has omitted to disclose the date of knowledge of the dismissal of the appeal or even the date of death of his earlier counsel. There is also no explanation to show due diligence on the part of the petitioner whose appeal had earlier also been dismissed for default to have made any query regarding status of his appeal for such a long period. In this view of the matter, this Court is not inclined to align with the



submission on behalf of the petitioner that the petitioner has no knowledge of the dismissal of the said appeal prior to the filing of the restoration application. This Court holds that this restoration application has no merit.

The restoration application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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