

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2383 of 2015

In
SA 92 of 2005

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1. Baldeo Ram son of late Aganu Ram
 2. Kedar Ram son of Baldeo Ram
 3. Subedar Ram son of Baldeo Ram All residents of village Lahuar Police Station Rajgir District Nalanda.
 4. Yasoda Devi wife of Ramautar Ram
 5. Binda Devi wife of Dhanraj Ram Both residents of village Lodipur Police Station Parwalpur District Nalanda.
 6. Nand Kishore Ram son of Ram Swaroop Ram resident of village Bargaon, Police Station Nalanda District Nalanda but in the decree under appeal the address of this appellant is wrongly not scribed
 7. Doman Singh son of Basudeo Singh
 8. Santosh Singh son of Basudeo Singh Both residents of village Surumpur Police Station Silao District Nalanda.

.... Petitioner/s

Versus

1. Ramdeo Mistri son of late Lokhan Mistri
2. Janardan Mistri son of late Lokhan Mistri
3. Shaligram Mistri son of late Lokhan Mistri All residents of village Lahuar Police Station Rajgir District Nalanda.
4. Kamta Ram
5. Basant Ram Both minor son of Madan Ram under the guardianship of their father and well wisher
6. Shri Ram minor son of Kedar Ram under guardianship of his father and well wisher
7. Sanjay Singh son of Basudeo Singh
8. Lila Dei daughter of Basudeo Singh
9. Basudeo Singh son of late Mathura Singh All resident of village Surumpur Police Station Silao District Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar Sinha -2
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 03-05-2017 Heard learned counsel for the petitioners.

The present application has been filed for restoration of the second appeal which has been dismissed for non-compliance of the order dated 25.02.2010 by which the prayer on behalf of the appellants for grant of three weeks time to implead Madan Ram as a party respondent in the appeal or to file an application with respect thereto was allowed with condition that if the said order was not complied the second appeal would stand dismissed.

This restoration application has been filed on 07.09.2015.

Learned counsel for the petitioners has submitted that the learned counsel who had appeared on behalf of the appellants in the said second appeal met an accident where his leg was fractured and therefore no proper information could be sent to the appellants regarding the compliance of the said order passed by this Court. It has been further submitted that the appellants could know about the dismissal of the second appeal only during the course of evidence in another case. On this base, it has been contended that as the learned counsel for the appellants in the second appeal was unable to inform the petitioners regarding the



order passed by this Court, the petitioners have got sufficient cause for condonation of delay and restoration of the second appeal.

After perusal of the materials on record, it transpires that there were two advocates appearing in the second appeal on behalf of the appellants. The Vakalatnama filed in the said second appeal also demonstrates that there were two advocates who have accepted the Vakalatnama on behalf of the appellants in the said second appeal. It further transpires that there were altogether eight appellants in the second appeal. There is no averment in the entire restoration application that after the filing of the second appeal in between 25.02.2010 and 07.09.2015 (when this restoration was filed) the petitioners ever approached their advocates in the second appeal to enquire about the status of their second appeal. The submission on behalf of the appellants that since the advocate appearing in the said second appeal had got his leg fractured due to which he could not send appropriate information to the appellants cannot be a ground for accepting the explanation in view of the glaring fact that there was another advocate appearing in the said second appeal on behalf of the petitioners and the records also show that the another advocate, namely Arbind Prasad Singh besides Santosh Kumar Sinha, had been pursuing the



second appeal on behalf of the appellants by depositing the court fee in the said second appeal and also taking requisites steps by filing slip etc. before the joint registrar. Moreover, the plea of the accident leading to leg fracture of Mr. Santosh Kumar Sinha, Advocate has not been raised in the restoration petition.

After considering the entire facts and circumstances of the case, this Court is not inclined to accept that there is sufficient case for condonation of delay and restoration of the second appeal on the ground as pleaded on behalf of the petitioners.

The restoration application is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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