

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2764 of 2016

IN

SA 38 of 204

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1. Bharat Chauhan,
2. Ram Bachan Chauhan,
3. Chatur Bhawan Chauhan,
4. Vijay Chauhan All sons of Late Ramji Nonia, Resident of Village- Rampur,
P.S.- Chand, PO- Rampur, District- Kaimur at Bhabhua.

.... Petitioners

Versus

1. Nibul Singh, Son of Late Ram Prasad Singh, Resident of Rampur, P.S.- Chand
District- Kaimur at Bhabhua.
2. Phula Devi, wife of Devinath Nonia, Resident of Barthara, P.S.- Chandauli,
District- Chandauli (U.P.)

.... Opposite Parties.

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Appearance :
For the Petitioner/s : Mr. Pancham lal Jaiswal
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-05-2017

Heard the learned counsel for the petitioners.

The S.A.No.38/2004, filed by the defendant-
appellants against the judgment of affirmance stood dismissed for
non-prosecution on 25.04.2008. The present M.J.C. No. 2764/2016
has been filed on 29.07.2016 praying for restoration of the said
appeal.

It has been submitted on behalf of the
petitioners that earlier the time was taken by learned counsel for the
respondents to file reply in the substitution matter but the said reply
was not filed but on 25.04.2008 the respondents got the second appeal



dismissed for non-prosecution. It has been further contended that the petitioners had no knowledge of the dismissal of the appeal by order dated 25.04.2008 and they for the first time came to know regarding the dismissal of their appeal on 18.07.2016 when the Execution Case No.04/2011 was filed by the respondents. Learned counsel has also tried to persuade this Court that the petitioners have got good case on merits and the second appeal be restored.

After considering the submissions and the averments made in the restoration application, it is manifest that on 25.04.2008, no body appeared on behalf of the appellants though the learned counsel for the respondents was present on that day. This Court dismissed the S.A.No.38/2004 by order dated 25.04.2008 for non-prosecution. The specious plea has been taken on behalf of the petitioners in paragraph-4 of the restoration application that the petitioners had always been in contact with their lawyer who continued to say that the case would be listed and thereafter the information would be sent to the petitioners. It has also been stated in paragraph-4 of the restoration application that the concerned lawyer who was the main Pairvikar of the case died. However, no date of death of the concerned lawyer has been disclosed. Evidently, there is inordinate delay of nearly 8 years in approaching this Court for restoration of S.A.No.38/2004. There is no cogent explanation on



behalf of the petitioners with regard to the fact as to the steps taken by the petitioners during this 8 years period for enquiring the status of their appeal before this Court where they were appellants after having lost in both the courts below. The facts stated in the restoration application does not enthuse this Court to come to the conclusion that there is sufficient cause established on behalf of the petitioners for restoration of the S.A.No.38/2004.

The restoration application is therefore dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2017
Transmission Date	

