

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.206 of 2005

In
Miscellaneous Jurisdiction Case No. 2617 of 2003

=====

Gulabi Kuer & Ors

.... Petitioner/s

Versus

Shyam Narayan Rai & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bishwa Nath Choudhary

For the Respondent/s : Mr. Null

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 10 06-07-2017 **1.** It appears that in spite of several adjournments from 06.03.2017, the petitioner never produced the order passed by the Supreme Court whereby petition for Special Leave to Appeal (Civil) No.8 of 2005 was disposed of by the Supreme Court. However, at the time of hearing of this MJC application, the learned counsel, Mr. Bishwanath Chaudhary, for the appellant submitted that in view of the order passed by the Supreme Court dated 13.01.2005, in the said petition for Special Leave to Appeal (Civil) No.8 of 2005, this MJC application has been filed by the petitioner.
- 2.** It appears that First Appeal No.194 of 2001 was dismissed on the ground of limitation as the First Appeal was barred by law of limitation for about 146 days. The petitioner had



filed I.A. No.2088 of 2001 praying for condoning the delay which was dismissed for non-prosecution, consequently the appeal was dismissed.

3. After dismissal of the First Appeal, MJC No.2617 of 2003 was filed for restoration of the First Appeal which was dismissed on 13.08.2004. The petitioner then filed Special Leave Petition, i.e., S.L.P. No.8 of 2005 against the order dated 13.08.2004 before the Supreme Court. Before the Supreme Court, it appears that the order rejecting the limitation application for non-prosecution was not challenged by the present petitioner, therefore, on 13.01.2005, the Supreme Court granted four weeks time on the request of the petitioner's counsel as he was seeking permission to challenge the order dismissing the application under Section 5 of the Limitation Act for condonation of delay. Instead of challenging the said order of the High Court dismissing the limitation application before Supreme Court, the petitioner has filed this MJC application before this Court praying for restoration of limitation application being I.A. No.2088 of 2001 / or await the final decision of SLP No.8 of 2005. At the time of hearing of this MJC application as stated above in March, 2017 it was submitted that the SLP has already been disposed of by the Supreme Court but still today the order of the Supreme Court has not been



produced before the High Court. It is informed to this Court that from the internet also, the detail order of the Supreme Court is not available. Only it shows that the SLP has been disposed of. Therefore, now the presumption is that the SLP has already been disposed of by the Supreme Court and the order passed by the High Court dismissing the First Appeal has been confirmed. Now, therefore, this MJC application prior to disposal of the Special Leave Petition before the Supreme Court which has been disposed of on 02.06.2006 is not maintainable. The same prayer was made before the Supreme Court, i.e., for restoration of the First Appeal and the prayer has been made in this MJC application for restoration of I.A. which is not possible unless the First Appeal is restored. Nowhere it is stated in the MJC application or by filing supplementary affidavit by the petitioner that the Supreme Court has either restored the First Appeal or had set aside the order of the High Court dismissing the First Appeal on being barred by law of limitation. Only it is stated that SLP has been disposed of.

4. Now, therefore, when the order dismissing the First Appeal has been confirmed by the Supreme Court, there is no question of restoration of First Appeal by the High Court arises, particularly when the MJC application filed by the petitioner earlier for restoration of First Appeal had already been rejected.



Now, therefore, unless the First Appeal is restored, there is no question of restoration of I.A., i.e., limitation application arises.

5. Thus, in view of the above facts and circumstances of the case, this MJC application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U			
---	--	--	--

