

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1131 of 2017
Arising out of
Miscellaneous Appeal No. 1151 of 2016

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1. The State of Bihar through District Magistrate, Buxar.
 2. The District Land Acquisition Officer, Buxar.
 3. The Executive Engineer Flood Control Division, Buxar.

.... Petitioners

Versus

1. The Hon'ble Chief Justice, Binod Kumar Rai (Retd.) S/o Late Kailash Rai.
2. Smt. Shanti Rai, W/o Hon'ble Chief Justice Binod Kumar Rai, (Retd.).
3. Amitabh Kumar Rai S/o Hon'ble Chief Justice Binod Kumar Rai, (Retd.). All Resident of Kailash Roy Street of R.K. Avenue, Moh- & P.O.- Kadam Kuan, Town, State Bihar, Pin Code 800003.
4. Markanday Roy, S/o Dashrath Roy
5. Ramkanday Roy, S/o Dashrath Ray, both are resident of Umarpur, P.S.- Buxar, District-Buxar

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Arun Kumar Bhagat, Advocate.

For the Respondent/s : Mr. Binod Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL ORDER

4 04-10-2017 Heard learned counsel for the petitioners and learned counsel for respondent nos. 1 to 3.

2. This MJC application has been filed for restoration of Miscellaneous Appeal No. 1151 of 2016 which was dismissed for default on 30.03.2017 for non-compliance of the peremptory order dated 09.03.2017 passed by this court to remove the defect no.4 regarding not mentioning of party positions of both sides in the award passed by the L.A.R.R. Authority as well as in the memo of appeal and defect no.13



regarding not containing seal of certified to be true copy with signature and date on the certified copy of the award within three weeks with the case that though the appellants have removed several defects as pointed out by the office, but the aforesaid two defects have been advertently left to be removed and there has been no deliberate and malafide latches on behalf of the appellants to remove the said defects rather the same could not be removed due to mistake of the junior counsel and in case of non-restoration of the Miscellaneous Appeal, heavy loss would be caused to public exchequer.

3. Learned Counsel for respondent nos. 1 to 3 vehemently opposed the aforesaid application submitting that the miscellaneous appeal filed by the appellants against the award passed by the L.A.R.R. Authority is not maintainable, as the said award is a decree, hence First Appeal lies against the said decree and not miscellaneous appeal under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is further submitted that the appellants have not removed several defects as pointed out by the respondents in Para-3 of their counter affidavit despite giving several opportunities for quite long time. As miscellaneous appeal against award is not maintainable, hence by restoration of



the said appeal, no fruitful result is going to be achieved by the appellants and filing of the MJC application under Section 151 CPC by the appellants with *malafide* intention to defeat the ends of justice is not permissible in the eye of law.

4. From perusal of the record, it appears that Miscellaneous Appeal No. 1151 of 2016 was filed by the appellants against the Judgment and award passed by the L.A.R.R. Authority-cum-District Judge, Buxar in Consolidated Land Acquisition (Reference) Case No. 01 to 14 of 2015. As per Section 70 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the award passed by the LARR Authority shall be deemed to be a decree and as per Section 74 of the Act *ibid*, First Appeal would lie against the said award. But instead of filing first appeal against the said award, the appellants have filed the miscellaneous appeal which is not maintainable. But in my considered opinion, issue of maintainability of the miscellaneous appeal which has been dismissed in default and for restoration of the same, this MJC application has been filed, is not required to be considered at this stage as it is not the stage of considering merit of the miscellaneous appeal rather merit of the restoration application. Merit and maintainability of miscellaneous appeal will be



considered at the proper stage after restoration of the same. As there is no specific provision provided under Code of Civil Procedure for restoration of the miscellaneous appeal dismissed for default, the application for restoration of the same under Section 151 CPC is maintainable. It is settled principle of law that justice should be done after hearing the parties and injustice should not be done merely on technicality by shutting down the opportunity of hearing.

5. Considering the facts and circumstances of the case, this application is allowed and miscellaneous appeal no. 1151 of 2016 is restored to its original number.

(Prakash Chandra Jaiswal, J)

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