

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No. 66 of 2015

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1 (a) Most Savitri Devi, Wife of Baidnath Prasad Gupta
1 (b) Amar Nath Prasad Son of Late Radheshyam Prasad
1 (c) Gayatri Devi, Wife of Late Mohan Lal Gupta
1 (d) Kedar Nath Prasad, Son of Late Radheshyam Prasad
1 (e) Parasnath Prasad, Son of Late Radheshyam Prasad
1 (f) Sangeeta Devi, Wife of Om Prakash Gupta
1 (g) Shobha Devi, Wife of Ajay Prasad Gupta
1 (h) Vibha Devi, Wife of Srikant Prasad
1 (i) Sanjay Kumar, son of Kameshwar Prasad
1 (j) Amrita Kumari, Wife of Lalit Bora
1 (k) Kameshwar Prasad, Son of Late Shivji Prasad

.... Petitioners

Versus

Lalan Prasad Son of Late Gopaljee Sah

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Satyavrat Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

9 17-08-2017 Heard learned counsel for the petitioners as well as

learned counsel appearing for the opposite party.

Petitioners have questioned the order dated 27.01.2015 passed by the learned District Judge, West Champaran, Bettiah in Misc. Case No. 48 of 2009 by which and whereunder learned District Judge condoned the delay of 547 days in filing the aforesaid miscellaneous case and having allowed the aforesaid miscellaneous case restored the Probate Case No. 24 of 2003 which was earlier dismissed by the learned District Judge on 19.03.2008 in non prosecution of the aforesaid probate case.



The opposite party filed Probate Case No. 24 of 2003 in the court of District Judge, Bettiah and in the aforesaid probate case, original petitioner appeared and filed objection. However, the opposite party made default in making pairvi in the aforesaid probate case as a result whereof, the learned District Judge dismissed the aforesaid probate case vide order dated 19.03.2008 for non prosecution. The aforesaid order dated 19.03.2008 was challenged by the opposite party before this court by filing Misc. Appeal No. 290 of 2008 which was dismissed as withdrawn on 30.07.2009 giving liberty to opposite party to file restoration petition along with an application for condonation of delay before the District Judge, West Champaran, Bettiah in Probate Case No. 24 of 2003. In pursuant to the aforesaid liberty, the opposite party filed Misc. Case No. 48 of 2009 before the District Judge, West Champaran, Bettiah which was allowed by the learned District Judge passing the impugned order dated 27.01.2015.

Learned counsel appearing for the petitioners submits that opposite party did not give any satisfactory reason of non filing the miscellaneous case in time rather the opposite party explained the delay from 30.07.2009 till the date of filing of the aforesaid miscellaneous case but the learned District Judge failed to take note of the aforesaid fact.



On the other hand, learned counsel appearing for the opposite party supports the impugned order arguing that sufficient reason was given in the miscellaneous case for condonation of delay and the learned District Judge having satisfied with the explanation given in miscellaneous case condoned the delay and restored the Probate Case No. 24 of 2003 and, therefore, this court should not interfere into the findings of the District Judge.

Having heard the contentions of both the parties, I have gone through the record. I find that just after dismissal of Probate Case No. 24 of 2003, the opposite party filed Misc. Appeal No. 290 of 2008 which remained pending before this court till 30.07.2009 when this court permitted the opposite party to withdraw the aforesaid miscellaneous appeal with liberty to file restoration petition before the District Judge in Probate Case No. 24 of 2003 and thereafter the opposite party filed Misc. Case No. 48 of 2009 on 16.10.2009. Therefore, it is apparent from the aforesaid fact that after dismissal of Probate Case No. 24 of 2003, the opposite party was knocking the door of this court in Misc. Appeal No. 290 of 2008 till 30.07.2009 and just after the withdrawal of aforesaid Misc. Appeal No. 290 of 2008, the opposite party filed Misc. Case No. 48 of 2009 on 16.10.2009 i.e. within three months from the date of withdrawal of Misc. Appeal



No. 290 of 2008. Therefore, it cannot be said that the opposite party has not given any explanation of delay prior to 30.07.2009 rather the aforesaid fact clearly explain the circumstances in which the miscellaneous case could not be filed before the District Judge prior to 30.07.2009.

Therefore, considering the aforesaid facts and circumstances as well as submissions of the parties, I do not find any force in this revision petition. Accordingly, this revision petition stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

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