

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.174 of 2010

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1. State of Bihar through the Collector Kishanganj
2. Circle Officer Kishanganj, P.S.- Kishanganj, Distt.- Kishanganj
.... Appellants.

Versus

1. Shahana Iraqi S/O Most. Jakaria Motwalli of Masjid Maulana Anwar Ali Gandhi Chowk, Kishanganj Town R/O Moh.- Khagara under Kishanganj Municipality, Ward No.- 6, P.S.- Kishanganj, Distt.- Kishanganj.
2. Choudhary Khalikajama, Advocate Chief Of Tahfazul Masjid And Kabristan Committee, Kishanganj.
3. Md. Motiur Rahman S/O Late Nurul Haque, Secretary, Tahfazul Masjid and Kabristan Committee Kishanganj.
4. Shamim Rabbani, Member of Tahfazul Masjid and Kabristan Committee, Kishanganj, R/O Kishanganj, P.S.- Kishanganj, Distt.- Kishanganj.
5. Jalil Ahmad, Member Of Tahfazul Masjid and Kabristan Committee, Kishanganj R/O Kishanganj, P.S.- Kishanganj, Distt.- Kishanganj.
6. Most. Asgari, W/O Late Jakir Ali Iraqui, R/O Saudagarpatti, P.O.+P.S.+Distt.- Kishanganj.
7. Lili, D/O Late Jakir Ali, R/O Saudagarpatti, P.O.+P.S.+Distt.- Kishanganj.
8. Murtaza Ansari S/O Late Sahabuddin Ansari, R/O Moh.- Churipatti, P.O.+P.S.+Distt.- Kishanganj.
9. Saiyad Ahmad Ali, S/O Saiyad Khalil Ahmad, R/O Moh.- Saudargarpatti, P.O.+P.S.+Distt.- Kishanganj.
10. Mansur Alam, S/O Mohammad Miyan, R/O Moh.- Panibagh, P.O.+P.S.+Distt.- Kishanganj.
11. Ahmad Hussain, S/O Afzal Hussain, R/O Moh.- Saudagarpatti, P.O.+P.S.+Distt.- Kishanganj.
12. Ram Autar Jalan, S/O Late Hanuman Jalan, R/O Moh.- Gandhi Chowk, P.O.&P.S.&Distt.- Kishanganj.
13. Smt. Lipi Gupta, D/O Late Barun Kumar Gupta, Gitanjali Market, Kishanganj
14. Veena Kumari Jalan, D/O Ram Bilash Jalan, R/O Vill.- Almaging, Gorakhpur, Distt.- Gorakhpur, Uttar Pradesh
15. Rakesh Manka S/O Ram Bilash Jalan R/O Vill.- Almaging, Gorakhpur, Distt.- Gorakhpur, Uttar Pradesh
16. Gauri Shankar Jalan S/O Late Hanuman Baksh Jalan R/O Moh.- Gandhi Chowk, P.O.+P.S.+Distt.- Kishanganj
17. Chhagan Lal Jalan S/O Late Hanuman Baksh Jalan R/O Moh.- Gandhi Chowk, P.O.+P.S.+Distt.- Kishanganj.
.... Respondents.

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Appearance :

For the Appellant/s : Mr. Harish Kumar, G.P.-8
Mr. Sudhanshu Bhushan, A.C. to G.P.8
For the Respondent No. 1 : Mr. N. Hoda, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 19-06-2018



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Heard the learned counsel for the appellants and learned counsel for the respondent no. 1 on this miscellaneous appeal.

This miscellaneous appeal has been preferred against the order dated 16.10.2009 passed by the 1st Additional District Judge Kishanganj in Miscellaneous Case No.56/2004 whereby the learned lower court dismissed the aforesaid case filed by the appellants.

The factual matrix of the case is that respondent 1st set namely-Shahana Iraqi had filed Title Suit No. 34/1996 in representative capacity against the State of Bihar. As the defendants of the said case did not file written statement in the suit, despite giving opportunities, they were debarred from filing the written statement and the aforesaid case proceeded under Order-8 Rule-10 CPC and ultimately it was decreed by the court of Munsif II Kishanganj on 22.09.1998. Assailing the aforesaid judgment and decree, the State of Bihar had filed Title Appeal No. 52/1999. But as the appellants of the aforesaid title appeal did not file the required court fees and also did not appear in the case despite giving information to the learned counsel for the appellants times and again and as the aforesaid appeal was time barred, the aforesaid appeal was dismissed in default of the appellants on 13.09.2000 by the court of District Judge, Purnea. For re-admission of the aforesaid appeal the appellants State of Bihar preferred Misc. Case No. 56/2004 under



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Order 41 Rule 19 read with Section 151 of the C.P.C. Respondent 1st set filed rejoinder in the aforesaid case. After hearing the parties and perusing the record learned District Judge, Purnea dismissed the aforesaid Misc. Case of the appellant vide impugned order.

Being aggrieved and dissatisfied with the impugned order the appellant- State of Bihar and another have preferred this Misc. Appeal.

It is submitted by the learned counsel for the appellants that though the appellants have not filed the required court fees in the aforesaid Title Appeal No. 52/1999 and the learned counsel for the appellants was informed times and again by the Court for removal of the aforesaid defect and the learned counsel for the appellants did not take any step and also did not turn up in the appeal but the appellants should not be deprived of the opportunity of hearing in the appeal mainly on laches and misdemeanor on the part of the learned counsels. Hence, in the interest of justice setting-aside the aforesaid dismissal order, the appeal be re-admitted to its original file and be decided on merit after giving opportunity of hearing to the appellants.

On the other hand, it is submitted by the learned counsel for the respondent 1st set that as the appellants had not filed required court fees in the Title Appeal No. 52/1999 and also did not



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appear in the case despite giving several opportunities and also despite giving information to their learned counsels times and again, hence the said appeal was dismissed by the learned Appellate Court. It is further submitted that as the required court fee was not paid by the appellants, the appeal was not admitted for hearing and as the appeal was not admitted for hearing, the provisions of Order 41 Rule 19 C.P.C. is not attracted in the case under hand. Hence the aforesaid miscellaneous case filed under provisions of Order-41 Rule-19 C.P.C. is also not maintainable.

From perusal of the record, it appears that admittedly the required court fees for filing the appeal has not been deposited by the appellants-State of Bihar in Title Appeal No. 52/1999 and the learned counsel for the appellants was also informed by the learned Appellate Court to take proper step in the case number of times but despite giving information by the Court, the learned counsel for the appellants did not take any step and also the appellants did not turn up in the case and accordingly the appeal was dismissed in default by the learned Appellate Court on 13.09.2000.

It is the settled principle of law that justice should be done after hearing the parties and injustice should not be done on mere technicalities and shutting down the opportunity of hearing to the parties. In the case of **Rafiq and another versus Munshilal and**



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another reported in **AIR 1981 Supreme Court 1400** where an appeal filed by the appellant was disposed of in absence of his counsel, so also his application for recall of order of dismissal was rejected by the High Court, Hon'ble Apex Court in appeal set aside both the orders of dismissal with direction to the High Court to restore the appeal to its original number in the High Court and dispose it of according to law observing that a party who, as per the present adversary legal system, has selected his advocate, briefed him and paid his fee can remain supremely confident that his lawyer will look after his interest and such an innocent party who has done everything in his power expected of him, should not suffer for the inaction, deliberate omission or misdemeanor of his counsel.

Admittedly, in the case under hand the appeal was not admitted for hearing as the required court fees for filing the appeal has not been deposited by the appellants. As appeal was not admitted for hearing the provisions of Order 41 Rule 19 C.P.C. would not be attracted because the provision would come into play only when the appeal is admitted for hearing but in the case under hand the appeal was not admitted for hearing rather was pending for admission for the want of the required court fees and the same has dismissed before its admission. There is no specific provision in C.P.C. for restoration of the appeal dismissed for default before its admission. Hence, for the



want of any specific provision, the provision of Section 151 C.P.C. may be resorted and the appellants have also taken resort of the aforesaid provision.

Hence, considering the facts and circumstance of the case and in the interest of justice, the impugned order passed by the learned lower Court in Miscellaneous Case No. 56 of 2004 is set aside and the appeal is directed to be restored to its original file subject to payment of cost of Rs.5,000/- (Rupees Five Thousand) by the appellants as it stood pending for quite some time due to laches of the appellants.

However, the learned lower Court is directed to dispose of the aforesaid appeal as expeditiously as possible after admission of the same.

Accordingly, this Misc appeal stands disposed of.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
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