

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18349 of 2013

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Shahid Ghani Son Of Late Abdul Alim Resident Of Village - Chakji Narpalia,
P.S. Manjhi, District - Saran

.... Petitioner/s

Versus

1. Most. Khairun Khatoon Wife Of Late Md. Hussain Resident Of Village -
Makhdumganj, P.S. Manjhi, District - Saran
1. 2. Najma Khatoon Wife Of Nanhak Nat, Daughter Of Late Md. Hussain
Resident Of Village - Sadha Dhala, P.O. Chapra, P.S. Chapra Mofassil,
District - Saran
2. Buchi Khatoon Wife Of Phool Hassan Nat, Daughter Of Late Md. Hussai
Resident Of Village - Tajpur Phulwaria, P.O. Tajpur, P.S. Manjhi, District -
Saran
3. Salma Khatoon Wife Of Noora Nat, Daughter Of Late Md. Hussain
Resident Of Village - Pachrukhi, P.O. Ekma, P.S. Ekma, District - Saran
4. Bhuwari Khatoon Wife Of Idris, Daughter Of Late Md. Hussain Resident
Of Village & P.O. Basti, District - Basti, (U.P.), At Present Residing At
Village - Makhdoomganj (Narpalia), P.O. Narpalia, P.S. Manjhi, District -
Saran
5. Sonia Kumari Daughter Of Late Md. Hussain Resident Of Village -
Makhdumganj (Narpalia), P.O. Narpalia, P.S. Manjhi, District - Saran
6. Sohrab Nat So Of Late Md. Hussain Nat Resident Of Village -
Makhdumganj (Narpalia), P.O. Narpalia, P.S. Manjhi, District - Saran
7. Bhulna Nat Son Of Late Md. Hussain Nnat Resident Of Village -
Makhdumganj (Narpalia), P.O. Narpalia, P.S. Manjhi, District - Saran '
8. Gheyasu Nat Son Of Late Md. Hussain Nat Resident Of Village -
Makhdumganj (Narpalia), P.O. Narpalia, P.S. Manjhi, District - Saran
9. Md. Islam Son Of Late Rahim Netua Resident Of Village - Makhdumganj,
P.S. Manjhi, District - Saran
10. Md. Khalil Son Of Late Rahim Netua Resident Of Village - Ghorhat, P.S.
Manjhi, District - Saran
11. Md. Jalil Son Of Late Rahim Netua Resident Of Village - Ghorhat, P.S.
Manjhi, District - Saran
12. The State Of Bihar, Through Collector, Saran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ved Prakash Srivastva, Advocate
For the Respondent/s : Mrs. Mallika Majumdar, Advocate
Mrs. Prerna Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-06-2018

This application has been filed to quash the order dated



01-08-2013 passed by learned Munsif- IV, Chapra in Miscellaneous case No. 27 of 2013 whereby and whereunder this miscellaneous case filed by the petitioner was dismissed.

2. Heard learned counsel for the petitioner and the respondents. It appears that this petitioner filed a Title Suit No. 36 of 2010 against the respondents. In the said Title Suit Case, the respondents filed petition challenging the maintainability of the suit. The said petition was dismissed and against the said order, the respondents moved this Court for filing civil revision. During the pendency of the said suit, the defendant no. 1 Mohammad Hussain died and a petition for substitution was filed by the petitioner and it was allowed on 16.05.2012. The petitioner/plaintiff was directed to take steps for issuance of summons against the substituted respondents. The notices against respondents could not be issued as the required postal stamp was not submitted by the petitioner. The petitioner fell ill and on account of illness, he could not attend the Court and make Pairvi, resultantly the suit was dismissed as per order dated 23.01.2013. The petitioner filed miscellaneous case no. 27 of 2013 for restoration of said suit along with medical certificates in order to show that on account of illness, he could not take step for issuance of notice. The court below after going through the medical certificates and grounds taken in the restoration application, dismissed the petition observing that



the medical certificates were fabricated document.

3. Learned counsel for the petitioner submitted that the court below has committed procedural error in dismissing the case. The suit was dismissed under Order IX Rule 2 of CPC as the requisites required for issuance of summons were not filed by the petitioner. The court below has erred in observing that the certificates produced before the court below were fabricated as the age of petitioner was found contradictory. The court observed the age of petitioner as 50 years in one certificate and 80 years in another certificate. The learned counsel for the petitioner produced the certificates to show that the age which is written as 50 years and not 80 years. The court below without giving any opportunity or recording evidence of the petitioner has dismissed the miscellaneous case. The learned counsel for the respondents on the other hand supported the impugned order whereunder the Miscellaneous case was dismissed.

4. On perusal of impugned order, I find that the petitioner was not given any opportunity to adduce evidence in support of his case to show that he could not attend the Court in compelling circumstance. The reasons assigned for dismissing the miscellaneous case is against the material on record. The approach of the Court in dismissing the application for condoning the delay in filing the



petition for setting aside the dismissal of order for default on technical consideration would definitely result in defeating the cause of substantial justice.

5. In view of above facts and circumstances, the impugned order dismissing the application for condoning the limitation is set aside and this application is allowed. The court below is directed to pass order after giving opportunity to the petitioner in accordance with law.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.06.2018
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