

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19071 of 2012

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Smt. Mithila Devi W/o Ramashankar Prasad, Resident Of Mohalla- Gautam Buddha Nagar Godhana Road Anait, P.S.- Ara (Nawada), District- Bhojpur.

.... Petitioner/s

Versus

1. Ara Nagar Parishad, Ara Nagar, District- Bhojpur through its Nagar Commissioner, Ara Nagar, District- Bhojpur (Ara)
2. Ramesh Singh Yadav, Executive Officer, Ara Nagar Parishad, District- Bhojpur At Ara
3. Sri Bhagwan Singh, Land Measurement Officer, Ara Nagar Parishad, Ara, District- Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh

For the Respondent/s : Mr. Santosh Kumar

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-10-2018

Petitioner has filed this writ application for quashing the order dated 07.08.2012 passed by Sub-Judge-II, Ara in Miscellaneous Case No. 29 of 2011.

2. Heard learned counsel for the petitioner. Nobody appeared for the respondents.

3. Petitioner before this Court had filed a Money Suit No.23 of 2002 against the defendants which was dismissed in default on 02.09.2011. The petitioner further filed Miscellaneous Case No.29 of 2011 for restoration of said suit under Order IX Rule 4 read with section 151 of Code of Civil Procedure. The petitioner examined two witnesses in support of restoration application. The learned court below after considering the submission of petitioner, dismissed the miscellaneous case against which



the present writ application has been filed.

4. On going through the submission of learned counsel for the petitioner, impugned order and documents on record, I find that the petitioner had entrusted the Advocate clerk to look after the case as per instruction of her lawyer. The said Advocate clerk left taking interest in the case, in consequence of which, her suit was dismissed on 02.09.2011. The petitioner appeared in the court and stated that on account of laches on the part of her Advocate clerk, the suit was dismissed. Her husband also supported the case of petitioner as regards laches on the part of Advocate clerk. The learned court below disbelieved the version of the petitioner and dismissed the case. In course of evidence, she has further stated that she is still willingness to proceed with her case. There appears no reason as to why the petitioner who had filed the case for monetary gain would leave the case unattended and allow the suit to be dismissed in default.

5. In view of above facts and for the ends of justice, the impugned order refusing to restore the money suit is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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