

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Jurisdiction Case No.2880 of 2016**

**In**

**First Appeal No. 70 of 2008**

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Smt. Bibha Devi & Anr

.... .... Petitioner/s

Versus

Mostt. Gayatri Devi & Ors

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Manoj Kumar Manoj

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA**

**ORAL ORDER**

5      04-01-2018                      I.A. No. 9378 of 2017 has been filed on behalf of applicants under Section 5 of Limitation Act to condone the delay in filing restoration application bearing M.J.C. No. 2880 of 2016.

Heard the learned counsel for the applicants. Nobody appeared on behalf of opposite parties.

It is submitted that in First Appeal no. 70 of 2008 there were only three respondents, respondent nos. 2 and 3 have already appeared before admission and respondent no.1 died on 13.11.2012 issueless thereafter I.A. No. 1125 of 2013 has been filed and by order dated 12.07.2013 the name of respondent no.1 was directed to be expunged. First Appeal No. 70 of 2008 was admitted vide order dated 02.08.2013 and notices were ordered to be issued against non-appearing respondents though the respondent nos. 2 and 3 have already appeared on 16.05.2008



itself by filing Vakalatnama. Thus, there was no need to send notice of appeal to any of the respondents but peremptory order was passed for noticing non-appearing respondent and the appeal was dismissed due to non-compliance of peremptory order. A fresh Vakalatnama was filed on 27.08.2014 but just on 28.08.2014 the peremptory order was passed for complying the order dated 02.08.2013 and on 15.07.2016 when inspection was made then it was detected that peremptory order is there which requires re-call of the same as there was no non-appearing respondents in First Appeal and, as such, after condoning the delay M.J.C. No. 2880 of 2016 is fit to be allowed and First Appeal No. 70 of 2008 is fit to be restored to its original file and number.

Perused the record of First Appeal No. 70 of 2008. Respondent no. 2 Krishna Kumar holding power of attorney on behalf of Gayatri Devi and Surya Deo Pandit respondent no.3 have already appeared by filing Vakalatnama on 16.05.2008 itself which is on the record. The name of Gayatri Devi has already been expunged by order dated 12.07.2013. First Appeal No. 70 of 2008 was admitted on 02.08.2013 and there was order to issue appeal notice on non-appearing respondent but from the record it reveals that two respondents have already been appeared and one had already died and on 28.08.2014, the order was passed that the



appellants shall comply the order dated 02.08.2013 within two weeks peremptory, resulting, the appeal was dismissed. On behalf of appellants no one turned up and raised objection to that order resulting, dismissal of the appeal M.J.C. filed is full of merit and, as such, the delay in filing M.J.C. No. 2880 of 2016 is hereby condoned and accordingly I.A. No. 9378 of 2017 stands allowed.

In the result, M.J.C. No. 2880 of 2016 is also hereby allowed and First Appeal No. 70 of 2008 is restored to its original file and number. The respondent nos. 2 and 3 have already appeared and, as such, there is no need for any appeal notice and the name of respondent no. 1 has already been expunged.

**(Jitendra Mohan Sharma, J.)**

Rajiv/-

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