

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.4342 of 2016

IN

Civil Writ Jurisdiction Case No. 3687 of 1996

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Daya Shankar Prasad, Advocate, son of Late Ram Chandra Prasad, resident of 18
Emersion Road, Danapur Court, P.O./P.S. Danapur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commandant (Brigadier) Bihar & Orissa Sub Area, Danapur Cantt. P.S.
Danapur, District Patna.
3. The Executive Officer, Cantonment Board, Danapur Cantt, P.S. Danapur.
4. The District Magistrate, Patna.
5. The Senior S.P., Patna.
6. S.D.O. (Civil) Danapur Cantt, Patna P.S. Danapur, District Patna.
7. The Officer-in- Charge, Danapur P.S.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Shah, Advocate
	:	Mr. Nirajan Kumar, Advocate
For the State	:	None.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-08-2018

This application has been filed under Article 226 of the
Constitution of India read with Section 151 of the Civil Procedure
Code for restoration of CWJC No. 3687 of 1996 which was dismissed
for want of prosecution on 09.04.2015.

2. Heard the petitioner in person. No one appears on behalf
of the State.

3. The petitioner, a practicing advocate of this Court
submitted that he remained irregular in attending the Court work due
to un-avoidable circumstances. However, he had directed his clerk to
have the status report of the said writ petition. The clerk also failed to



keep watch over the case and on 20.12.2016 he was shocked to learn that the case was dismissed for want of prosecution on 27.07.2016. Thereafter, he directed his clerk to apply for certified copy of the order of dismissal and after obtaining the certified copy, he filed the instant restoration application on 22.12.2016. He pleaded that there is no deliberate laches on his part in pursuing the matter, but only because of some compelling circumstances, the case was dismissed for want of prosecution.

4. Having heard the petitioner in person and perused the records of the case, I find that the writ petition was filed on 26.03.1996. It was admitted on 21.09.1998. Thereafter, on 24.02.2012, when the case was taken up no one appeared for the petitioner. However, the case was adjourned. Again the case was taken up on 27.02.2012, the date on which once again no one appeared either for the petitioner or for the State. In absence of the parties, while dismissing the writ petition this Court vide order dated 27.02.2012 observed:-

“No one appears on behalf of the petitioner and the State.

The petitioner happens to be the father of one Prabhanjan Kumar, who was injured just before the visit of Governor for inauguration of a Football match.

The petitioner prays for adequate compensation for the same.



Having gone through the contents of the writ application, in my opinion, the same is completely misguided and based on disputed questions of facts, which cannot be appreciated by a writ Court.

In view of such, the application is dismissed.”

(emphasis mine)

5. From a reading of the aforestated order dated 27.02.2012, it would be evident that the same was dismissed taking into consideration merits of the case. However, an application for restoration was filed by the petitioner vide MJC No. 1604 of 2012. By order dated 05.09.2012 passed in MJC No. 1604 of 2012, considering the reasons stated in the petition, the writ petition being CWJC No. 3687 of 1996 was restored to its original file.

6. Thereafter, the writ petition was again dismissed on 09.04.2015 for non-prosecution. The order dated 09.04.2015 reads as under:-

“In spite of repeated calls no one has appeared on behalf of the petitioner to press the writ application. Counsel for the State is, however, present.

The writ application was earlier dismissed under order dated 27.2.2012 which reads as follows:-

“No one appears on behalf of the petitioner and the State.

The petitioner happens to be the father of one Prabhanjan Kumar, who was injured just before the visit of Governor for inauguration of a Football match.

The petitioner prays for adequate



compensation for the same.

Having gone through the contents of the writ application, in my opinion, the same is completely misguided and based on disputed questions of facts, which cannot be appreciated by a writ Court.

In view of such, the application is dismissed.”

It appears subsequently on an application filed by the petitioner the same was restored. Today no one has appeared on call. Counsel for the State pointed out that the writ application has been filed seeking award of damage together with interest. He submits that for the said relief, the petitioner could have filed a suit.

Be that as it may, since nobody has appeared on behalf of the petitioner to press this application, this Court is constrained to dismiss this writ application for non-prosecution. I order accordingly.”

7. After dismissal of the writ petition on 09.04.2015, once again an application for restoration was filed on 26.04.2016 by the petitioner vide MJC No. 1736 of 2016. The said MJC No. 1736 of 2016 was taken up on 27.07.2016 by the Court. Since the petitioner again failed to appear, the restoration application was dismissed for want of prosecution. The order dated 27.07.2016 reads as under:-

“Despite repeated calls, no one appears on behalf of the petitioner to press this application seeking restoration of C.W.J.C. No. 3687 of 1996 which stood dismissed for want of prosecution having recorded that the petitioner had earlier also failed to appear on call. Counsel for the State is present. The



application is dismissed for want of prosecution.”

8. After dismissal of the aforesaid MJC No. 1736 of 2016, the instant application has been filed by the petitioner on 22.12.2016 praying therein to restore the writ petition (CWJC No. 3687 of 1996).

9. The facts noted above would clearly suggest that on several occasions in past when the writ petition was taken up for hearing on merit, for one reason or the other, the petitioner failed to appear before the Court as a result of which the same was dismissed for want of prosecution.

10. On 27.02.2012, the Bench hearing the matter had dismissed the writ petition on merits. However, subsequently at the request of the petitioner the same Bench restored the application, but even thereafter the petitioner was not vigilant as a result of which repeatedly the writ petition got dismissed for want of prosecution.

11. Having regard to the manner in which the petitioner conducted the case, in the opinion of this Court, no case for restoration of the writ petition is made out. Resultantly, the same is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2018
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