

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3333 of 2017

In
Miscellaneous Appeal No.306 of 2003

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Mahendra Paswan and Ors.

... .. Petitioner/s

Versus

Most Munakia Devi and Ors.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Sinha, Adv.

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

7 19-06-2019 Heard Mr. Ajay Kumar Sinha, learned counsel for the
petitioners.

This restoration application is filed for restoration of M.A. No.306 of 2003 which was dismissed for non compliance of the peremptory order dated 30.03.2010 which obliged the appellant who is the petitioner before the Court to file requisites for fresh service of notice on respondent Nos.1 to 5 and for filing a substitution petition in relation to the respondent No.6.

Mr. Sinha learned counsel for the petitioners while supporting the restoration application submits that the requisites were filed in the appeal but with one day delay on 28.04.2010 and since the peremptory period expired on 27.04.2010 that the appeal was dismissed for non compliance of the order passed on 30.03.2010. He submits that there was no deliberate laches on



the part of the appellant in ensuring compliance except for calculation of the peremptory period.

In so far as the filing of the substitution for respondent No.6 is concerned, it is submitted that :

(a) since there is no information with the petitioners as regarding the surviving heirs of respondent No.6;

(b) since the dispute in the miscellaneous appeal in the court below in M.A. No.59 of 1982 and before this Court in M.A. No. 306 of 2003, basically revolves inter party between petitioners-appellants and the respondent first set who are the judgment debtor;

(c) since the auction purchase by the appellants had been nullified by the order which is subject matter of the miscellaneous appeal in the court below;

(d) since on the expiry of father of these petitioners who is appellant before the court below, the petitioners filed their substitution, which on rejection is subject matter of M.A. No.306 of 2003; the appeal can be considered on its merits.

Having heard Mr. Sinha learned counsel for the petitioner and considering that the delay in furnishing of the requisites in compliance of the order dated 30.03.2010 was only one day, I extend the said period until filing of the requisites on



28.04.2010 and since the requisites is already filed, the office would proceed to issue notice accordingly.

In so far as the filing of the substitution petition is concerned, considering the statement made in I.A. No.1 of 2019 as regarding the lack of information about the surviving heirs of respondent No.6, let the petitioner as advised, may take appropriate steps for expungement or otherwise of the respondent No.6 when the appeal comes up for consideration.

In the nature of the order passed, this restoration application is accordingly allowed and M.A. No.306 of 2003 is restored to its original file.

Office shall proceed to issue notice to the respondent no. 1 to 5 in M.A. No.306 of 2003 accordingly.

(Jyoti Saran, J)

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