

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.118 of 2016

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KAMLA UPADHAYAY Wife of late Janardan Upadhyay, resident of Village-
Anjoorpur, P.S. Phaphane, District- Balia (U.P.) at Present resident of Mohalla
Kankarbagh, House No. A/129, Housing Colony, Kankarbagh, Patna

... .. Petitioner/s

Versus

1. Rajdeo Narain Singh S/o Late D.N. Singh
2. Smt. Sushila Sinha W/o Shri Rajdeo Narain Sinha,
Both are residents of 307 Shekh Sarai, S.P.S. Phase 1 Pocket C, New Delhi
Presently residing at Rajshila Motors at and P.O. Sarai Bhola, Town and
District Dhanbad (Jharkhand)

... .. Respondents/O. Parties

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Appearance :

For the Petitioner/s : Mr. Saroj Kumar Upadhyay, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 17-10-2019

Heard parties.

This civil revision has been filed for setting aside the order dated 19.02.2016 passed by learned Sub-Judge-II, Patna in Miscellaneous Case No.1 of 2012 arising out of title suit no.127 of 1989 by which the miscellaneous case filed on behalf of the plaintiff-petitioner to restore the suit dismissed under Order 9 Rule 4 of CPC was rejected.

Title suit no.127 of 1989 was filed on behalf of the plaintiff-petitioner under specific performance of contract against the defendants-opposite parties in which defendants-opposite parties did not appear and the title suit for specific



performance of contract was decreed ex parte on 06.05.1996. Against the ex parte decree, defendants-opposite parties filed a petition under Order 9 Rule 13 of CPC for its setting aside and after hearing both the parties, the learned court below set aside ex parte decree and title suit no.127 of 1989 was restored to its original file. Even thereafter, the defendants-opposite parties failed to file their written statement and the case was fixed under Order 8 Rule 10 for hearing, however, counsel for the plaintiff-petitioner could not appear on 20.01.2006. There was also no representation on behalf of the defendants-opposite parties on the said date. Learned trial court dismissed the title suit no.127 of 1989 for non-prosecution against which plaintiff-petitioner filed a miscellaneous case no.1/2012 for restoration of title suit no.127 of 1989 along with an application for condonation of delay as the same was filed after 6 years on behalf of the plaintiff-petitioner. In support of miscellaneous case, three witnesses were examined on behalf of the plaintiff-petitioner giving reasons for non-appearance on 27.02.2006 when the case was dismissed for default as well as delay in filing the miscellaneous case for restoration of title suit no.127/1989.

However, considering the materials available on



record and evidence led on behalf of the plaintiff-petitioner disclosing the reasons for non-appearance on 27.02.2006 as well as delay in filing the miscellaneous case for the reasons that the original plaintiff was seriously ill and was undergoing treatment and had no knowledge about his title suit being dismissed for default, the miscellaneous case filed on behalf of the plaintiff-petitioner was dismissed by the trial court by order dated 19.02.2016 as impugned in this civil revision.

After going through the evidence led on behalf of the plaintiff-petitioner the reasons explaining for non-appearance on 27.02.2006 as well as delay in filing miscellaneous case on 10.12.2012, this Court is satisfied that plaintiff-petitioner was prevented by sufficient reasons for not appearing on 27.02.2006 and has also given satisfactory explanation for delay in filing miscellaneous case for restoration of title suit no.127 of 1989.

Accordingly, the order dated 19.02.2016 is set aside. Miscellaneous case no.1 of 2012 is allowed and as a consequence of which the order dated 27.02.2006 dismissing the title suit is recalled and title suit no.127 of 1989 is restored to its original file for further hearing from the stage it stood dismissed for default.



This civil revision is allowed.

Let the LCR be returned forthwith to the court
concerned.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2019
Transmission Date	NA

