

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.4669 of 2018

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Upendra Sao S/o. Ram Khelawan Sao R/o. Village+P.O. Madanpur, District-
Aurangabad

... .. Petitioner/s

Versus

Kali Charan Sao and Ors

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Singh, Advocate
For the Opposite Party/s : Mr. Vijay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 23-01-2019 Heard learned counsel for the parties.

This application has been filed for restoration of
Second Appeal No. 132 of 1997, which was dismissed on
09.01.2018.

On 09.01.2018, this Court had passed following
order in Second Appeal No. 132 of 1997:

*“Since the appeal arises out of the judgment
and decree passed in partition suit and this appeal has
already abated against the legal heirs of respondent
No. 13. Therefore, it cannot proceed in absence of the
legal heirs as right to sue does not survive in favour of
the appellant.*

*Accordingly, the whole appeal stands
dismissed as abated.”*



The record of second appeal aforesaid reveals that on 25.04.2011, the legal heirs of deceased respondent No. 13 were allowed to be substituted. By the same order the appellant was directed to file requisites within two weeks, failing which the memo of second appeal shall stand rejected against them (i.e., legal heirs of respondent No. 13) without further reference to a Bench. Thereafter, the Lawazima Board allowed four weeks final time by order dated 31.10.2017 directing the appellants to take fresh steps of notice against respondent No. 13 (i) and 13 (ii). This order was not complied. Then by order dated 30.11.2017, the Bench allowed four weeks peremptory time for compliance of order of the Lawazima Board dated 31.10.2017. The order was not complied. Hence, the appeal stood dismissed against respondent No. 13 (i) and 13 (ii) as abated. Thereafter, office placed notes whether due to abatement of this appeal against respondent No. 13 (i) and 13 (ii), the appeal would proceed against the remaining respondents or it would abate as a whole. On the office note the impugned order dated 09.01.2018 was passed. Order relates to abatement of whole appeal. Hence the same cannot not be re-examined in the present petition filed, under Section 151 of the Code of Civil



Procedure, for restoration of the appeal.

Accordingly, this application stands dismissed as
devoid of any merit.

(Birendra Kumar, J)

Mkr./Banti/-

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