

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1636 of 2018

In
Miscellaneous Jurisdiction Case No.4342 of 2016

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Daya Shankar Prasad son of Late Ram Chandra Prasad Resident of 18
Emersion Road, Danapur Cantt, P.O. P.S.- Danapur, District- Patna.

... .. Appellant

Versus

1. The State of Bihar
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.

... .. Respondents

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Appearance :

For the Appellant/s : Mr.Daya Shankar Prasad (In Person)
For the Respondent/s : Mr.Prabhat Kumar Verma- AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-12-2019

This Letters Patent Appeal has been filed by the
appellant under Clause 10 of the Letters Patent Appeal of the
Patna High Court against the oral judgment dated 23.08.2018
passed by the learned Single Judge in MJC No. 4342 of 2016
whereby and whereunder the leaned Single Judge has dismissed
the MJC for restoration of C.W.J.C. No. 3687 of 1996.

2. The relevant facts for deciding the present
Letters Patent Appeal lies in a narrow compass.



3. C.W.J.C. No. 3687 of 1986 was filed by the petitioner. The writ petition was admitted on 21.09.1998 and Rule was made returnable within six months.

4. C.W.J.C. No. 3687 of 1986 was listed for hearing on 27.2.2012 and the same was dismissed for non prosecution. However, the same was restored on 5.9.2012 vide order in MJC No. 1604 of 2012.

5. Once again the writ petition was dismissed on 9.4.2015 for non prosecution. MJC No. 1736 of 2016 was filed for restoration of the C.W.J.C. No. 3687 of 1996 dismissed on 9.4.2015 but MJC No. 1736 of 2016 was again dismissed for want of prosecution on 27.7.2016.

6. In the aforesaid background, the petitioner filed MJC No. 4342 of 2016 and the matter was heard on different dates as appeared from the order-sheet and finally on 23.8.2018 the petition was dismissed.

7. The learned Single Judge after noting the events of C.W.J.C. No. 3687 of 1986 and its dismissal for default on different occasions, came to the conclusion that the petitioner was not vigilant in pursuing the case and as such no case for restoration is made out.

8. Leaned counsel appearing on behalf of the



appellant has submitted that the writ petition was dismissed for want of prosecution for the reason beyond his control as he was not available at the time of hearing of the case. He submitted that at one point of time at the request of the petitioner late J.P. Shukla, learned Sr. counsel has accepted the brief to assist the Court. Unfortunately, Mr. Shukla died and in that background the writ petition was dismissed for default. The petitioner who is a practicing advocate and who earlier appeared in person has engaged Gautam Shah and Niranjana Kumar and Vakalatnama was filed but due to communication gap when the case was called out neither counsels were present nor the petitioner could be able to assist the Hon'ble Court.

9. The appellant a practising advocate today appeared in person and has submitted that he has fairly made statement before the Hon'ble Court and requested for restoration of the writ application i.e. C.W.J.C. No. 3687 of 1996 but the learned Single Judge dismissed the MJC No. 4342 of 2016 vide oral judgment dated 30.8.2016 and decline to accept the bonafide statement made in the restoration petition.

10. We have given our thoughtful consideration to the entire facts and circumstances of the case.

11. The appellant has invoked our jurisdiction in



ex debito justitiae. We are of the considered view that the appellant who was personally and emotionally involved in the case should have adopted a professional approach by engaging a counsel to assist the court like a professional counsel instead of conducting the case himself.

12. The MJC No. 4342 of 2016 was filed under Article 226 of the Constitution of India read with Section 151 of the CPC.

13. In fact a Full Bench of the High Court (five judges) have considered the inherent power of the Court under section 151 of the CPC and considering the scope of section 151 CPC the five judges bench allowed the restoration petition (AIR 1978 Pat 338)

14. From the entire gamut of fact, we find that the dismissal of the writ petition and restoration for default was attributed to the personal involvement of the petitioner, being the father of the victim.

15. Since the petitioner has invoked jurisdiction under Article 226 read with Section 151 of the CPC and prayed for restoration of the case *ex debito justitiae*, we are of the considered view that the jurisdiction of the Court under Article 226 of the Constitution of India is for the ends of justice and



while exercising jurisdiction the High Court in *ex debito justitiae* may pass appropriate order. The totality of the facts situation demands proper adjudication of the fact particularly when the writ court admitted the writ petition for hearing and thereafter the writ petition was not heard on merit as it is seen that even at the time of dismissing the MJC No. 4342 of 2016 no one was present on behalf of the State.

16. The Court after noticing the aforesaid factual background is of the view that MJC No. 4342 of 2016 requires reconsideration. Accordingly, the order of dismissing of MJC No. 4342 of 2016 is hereby set aside. However, for the ends of justice, the Court directs that the appellant shall engage a professional counsel and should not conduct his case personally and he is required to ensure hearing of the C.W.J.C. No. 3687 of 1996 alongwith the MJC No. 4342 of 2016

17. The learned Single Judge is requested to decide the MJC No. 4342 of 2016 afresh alongwith C.W.J.C. No. 3687 of 1996.

18. In the peculiar facts of the case, the matter is remitted back for decision afresh after hearing the parties and for the ends of justice, the Court request the learned Single Judge to hear the MJC No. 4342 of 2016 afresh and while



deciding MJC No. 4342 of 2016 the learned Single Judge is requested to consider the merit of the C.W.J.C. No. 3687 of 1996. In the event, the learned Single Judge finds merit in C.W.J.C. No. 3687 of 1996 he shall pass appropriate order in MJC No. 4342 of 2016 otherwise any exercise of jurisdiction for restoration would be exercise in futility.

19. With the aforesaid, the Letters Patent Appeal is allowed to the extent indicated hereinabove.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
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