

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1353 of 2018

=====

Shambhu Prasad Son of Late Ragholal, Resident of Village- Ismailpur, Police Station and District- Jehanabad.

... .. Petitioner/s

Versus

1. Smt. Kaushalya Devi @ Urmila Devi and Anr Wife of Lakshman Prasad Singh, Resident of Mohalla- Koiribari, Police Station- Civil Line, District- Gaya.
2. Smt. Keshari Devi, Wife of Rampriya Singh, Resident of Mohalla- Pani Tanki, Rajendra Nagar, Police Station Kadamkuan, Town and District- Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Subhash Chandra Bose
For the Respondent/s : Mr. Devanand Singh(In person)

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

12 18-09-2023

1. This is an application for quashing the order dated 27.03.2018 passed by District Judge, Jehanabad in Misc. Case No. 04 of 2016 whereby the petition filed by the petitioner for restoration of Misc. Case No. 07 of 2015 has been dismissed. The writ petition is being also filed for direction to restore the Misc. Case No. 07 of 2015 which was dismissed for default by order dated 26.06.2015.

2. Heard learned counsel for the petitioner and Shri Devanand Singh (In Person) for the both the respondents.

3. One Title Suit No. 09 of 1985 was filed by the petitioner. The petitioner is the substituted heir of original



plaintiff of Title Suit No. 09 of 1985. The Title suit was dismissed on 08.09.1999, thereafter, an appeal was preferred against the judgment dated 08.09.1999 vide Title Appeal No. 11 of 1999.

4. From the records, it appears that the Title Appeal was filed by one advocate namely *Ram Lakhan Sinha* and the Title Appeal No. 11 of 1999 was dismissed for default on 09.01.2004, thereafter, for restoration of Title Appeal No. 11 of 1999. Misc. Case No. 07 of 2015 was filed and the same has been dismissed on 26.06.2015. Against the order dismissing the Misc Case No. 07 of 2015, Misc. Case No. 04 of 2016 was filed which has been dismissed by the District Judge, Jehanabad by the impugned order dated 27.03.2018.

5. Learned counsel for the petitioner has submitted that the impugned order cannot be sustained as the same has been passed without considering the fact that originally the title appeal was dismissed for default on 09.01.2004 and it was the case of the petitioner that one advocate namely *Sant Kumar Karn* was entrusted with the file of the appeal and he had filed the appeal in the year 1999, and in the year 2010 when the petitioner came and enquired about his case then he came to know that *Shri Sant Kumar Karn* had passed away and his



appeal was dismissed on 09.01.2004.

6. It has further been submitted by the learned counsel for the petitioner that after the death of *Shri Sant Kumar Karn*, the file was entrusted to *Shri Ram Lakhan Sinha* in 2010 and he also did not do *pairavi* and he died in the year 2014, thereafter, the restoration application for restoring the Title Appeal No. 11 of 1999 was filed in the year 2015 vide Misc. Case No. 07 of 2015 which was dismissed on 26.06.2015 for non-prosecution.

7. He further submits that the petitioner, thereafter, filed an application vide Misc. Case No. 04 of 2016 against the order dated 26.06.2015 for restoration of the Misc. Case No. 07 of 2015 which has been dismissed by the impugned order dated 27.03.2018 passed by the District Judge.

8. The contention of the petitioner basically is that the Title Appeal was filed by his advocate namely *Sant Kumar Karn* who for reasons best known to him did not attend the case regularly, thereafter, the Title Appeal was dismissed in the year 2004. The petitioner had no knowledge about the same and thereafter, he entrusted the file to *Ram Lakhan Sinha* in the year 2010 after death of *Shri Sant Kumar Karn* but *Ram Lakhan Sinha* also died in the year 2014 without filing the restoration



application and subsequently the restoration application was filed in the year 2015 which has again been dismissed on 26.06.2015 as no lawyer appeared to press the restoration application vide Misc Case No. 07 of 2015.

9. Learned counsel for the respondent/s has taken this court to the *vakalatnama* filed in Title Appeal No. 11 of 1999 which shows that the appeal was filed through *Shri Ram Lakhan Sinha*, advocate who had signed the *vakalatnama* on 06.10.1999 and, therefore, he was the lawyer entrusted with the appeal right from the very beginning and not *Shri Sant Kumar Karn*.

10. At this juncture, learned counsel for the petitioner submits that *Shri Sant Kumar Karn* was senior counsel and *Shri Ram Lakhan Sinha* was advocate on record and he had entrusted the file initially to *Shri Sant Kumar Karn* and not to *Shri Ram Lakhan Sinha*.

11. Learned for the respondent/s further submits that even if the file was entrusted to *Shri Ram Lakhan Sinha* in the year 2010 and when the petitioner had come to know about the death of *Shri Sant Kumar Karn* then he should have filed the restoration application in the year 2010 but the restoration application has been filed in the year 2015 after the death of



Shri Ram Lakhan Sinha. It appears that the petitioner who was the appellant in the Title Appeal was not at all vigilant enough in the disposal of the appeal and though the appeal was filed by *Ram Lakhan Sinha*, but the petitioner has tried to make out a case that it was dismissed because *Shri Sant Kumar Karn* was looking after the case and he had passed away. It was *Shri Ram Lakhan Sinha*, who was the advocate on record in the Title Appeal and he was alive till the year 2014 as per the case of the petitioner and despite having knowledge about the dismissal of the Title Appeal at the time of death of *Shri Sant Kumar Karn* in the year 2010, no restoration application was filed till the year 2015, thereafter, restoration application was also dismissed and now by the impugned order, the learned District Judge, Jehanabad after considering all the materials has dismissed the restoration application by the impugned order after finding that the medical certificate produced by the petitioner is of doubtful nature.

12. Right from the beginning, the petitioner has made out a case that he was being represented by *Shri Sant Kumar Karn* whereas he was being represented by *Shri Ram Lakhan Sinha* who as per the own case of the petitioner was alive till the year 2014 thereafter, his restoration application



which was filed after much delay in the year 2015 was again dismissed for default.

13. In these circumstances, I am not inclined to interfere in the impugned order. The Court below has rightly dismissed the restoration application filed by the petitioner.

14. Accordingly, this application stands dismissed.

(Sandeep Kumar, J)

Shishir/-

U			
---	--	--	--

