

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.916 of 2008**

Kalawati Devi, w/o Ganesh Ram, resident of Village-Rajauli, P.S.-Rajauli,  
District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Registrar, Judge-in-Charge, Civil Court,  
Nawada.
2. a. Most. Daymanti Devi, widow of Late Rajendra Prasad  
b. Santosh Kumar, son  
c. Munni Devi, daughter  
d. Chunni Devi, daughter
3. Surendra Prasad
4. Daya Nand Prasad  
All sons of Bisheshwar Lal, resident of village: Hardiya, P.S.- Rajauli,  
Distt.- Nawada
5. Chinta Devi, D/o Late Bisheshwar Lal and W/o Lala Prasad,  
resident of Town- Barh, P.S.- Barh, District- Patna
6. Tara Devi, D/o Late Bisheshwar Lal and W/o Dasrath Prasad, resident of  
village & P.S.- Mokamah, District- Patna
7. Saroj Devi D/o Late Bisheshwar Lal and W/o Gauri Prasad, resident of  
Mohalla- Malgodam, P.S. & District- Nawada
8. Usha Devi S/o Late Bisheshwar Lal and W/o Ganesh Lal. resident of  
Mohalla- Marwari Bazar, Town- Samastipur, District- Samastipur
9. Anandi Prasad
10. Krishna Prasad,

Both sons of Late Bhelu Lal, resident of Village- Rajauli, P.S- Rajauli,  
District- Patna

... .. Respondent/s

**Appearance :**

|                      |   |                                |
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| For the Petitioner/s | : | Mr. Gopal Bohra, Advocate      |
| For the Respondent/s | : | Mr. Birju Prasad, GP-13        |
|                      | : | Ms. Shweta Ananda, AC to GP-13 |

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**ORAL ORDER**

7      16-02-2023      The present writ petition has been filed  
seeking the following reliefs:-

*“1(i). For quashing/setting aside the  
judgement/order of dated  
21.06.2007 passed in Misc. Appeal  
No.06 of 06/01 of 07 by the learned*



*Additional District and Sessions Judge, Fast Track Court-Vth, Nawada, whereby and whereunder the said Misc. Appeal preferred against the order dated 11.08.06 passed in Misc. Case No.- 12/03 has been dismissed.*

*(ii) For setting aside the ex-parte judgement dated 24.04.1999 and decree of dated 09.06.2003 passed against this petitioner in Title Suit No.-197 of 93/120 of 98 by the Additional Munsif Illrd, Nawada enabling the petitioner an opportunity to contest the said suit.*

*(iii) For staying the Execution proceeding arising out of the said judgement and decree passed in Title Suit No.-197 of 93 / 120 of 98 pending in the court of learned Additional Munsif Illrd, Nawada vide Execution Case No.-13/03."*

It appears from the records that a suit bearing Title Suit No. 197 of 1993/102 of 1998 was disposed off by a judgment dated 24.04.1999, passed by the learned Additional Munsif-3<sup>rd</sup>, Nawada and thereafter, a final decree dated



09.06.2003 was prepared. The petitioner herein being aggrieved by the said judgment and decree, passed in Title Suit No. 197 of 1993/102 of 1998, had filed a petition for recall of the said judgment dated 24.04.1999, bearing Miscellaneous Case No. 12/2003, before the learned court of Additional Munsif-3<sup>rd</sup>, Nawada on the ground that the judgment and decree in question has been passed *ex-parte*, however, the same was dismissed by a judgment dated 11.08.2006 leading to filing of a miscellaneous appeal bearing Miscellaneous Appeal No. 06 of 2006/01 of 2007, which has also stood dismissed by the impugned judgment dated 21.06.2007, on the ground that recall of the judgment and decree passed by the learned Additional Munsif-3<sup>rd</sup>, Nawada would amount to causing prejudice to the contesting defendants no. 1 and 2, hence the petitioner ought to have filed a Title Appeal, specially in view of the fact that notices of the said suit had been validly served upon her.

Having regard to the aforesaid facts and



circumstances of the case, the learned counsel for the petitioner seeks liberty on behalf of the petitioner to file appropriate Title Appeal, however, seeks a direction upon the Appellate Court to sympathetically consider the issue regarding condonation of delay in filing the Appeal, especially taking into consideration the period spent by the petitioner in pursuing a wrong remedy.

Accordingly, the writ petition stands disposed off as not pressed, however, with the aforesaid liberty to the petitioner and with an observation that the Appellate Court shall consider the issue regarding condonation of delay in filing the appeal, sympathetically, however, in accordance with law.

**(Mohit Kumar Shah, J)**

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