

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.639 of 2016

1. Sita Ram Yadav and Anr Son of Yogendra Yadav, R/o Village- Rehua Tola Murbariya, Pargana- Sahabad, P.S. Lakhisarai, District Munger at present District Lakhisarai.
2. Pramod Yadav Son of Ram Khelawan Yadav, R/o Village- Partarpur, P.O. and P.S. Balia, District Begusarai.

... .. Appellant/s

Versus

1. Shivendra Yadav
2. Sikandar Yadav
3. Manoj Kumar Yadav Sl. No. 1 to 3 Sons of Brahmdeo Yadav All R/o Village- Rehua, Murbaria Tola, P.S.- Lakhisarai, District- Munger, at present District- Lakhisarai.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jainendra Kumar Pushkar
For the Respondent/s : Mr. Amrendra Kumar

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 08-02-2023 Heard learned counsel for the appellants.

2. This appeal has been filed for setting aside the order dated 16.03.2016 passed in Miscellaneous Case No.01 of 2014 by learned Adhoc A.D.J.-V, Lakhisarai dismissing the Misc. Application No.01 of 2014 filed under Order XXXXI Rule 19 read with Section 151 CPC for restoration of Title Appeal No.04 of 2003.

3. The appeal has been filed with one day delay. To condone the delay, the appellants have filed an application being I.A. No.9331 of 2016. Earlier this Court had issued notices in the appeal as well as in the limitation matter to the respondents.



The respondents have entered appearance. There is no opposition to the application seeking condonation of delay.

4. In the aforesaid view of the matter, I.A. No.9331 of 2016 kept at Flag 'X' is allowed. The delay in filing of the appeal is hereby condoned.

5. Learned counsel for the appellants submits that he has filed a supplementary affidavit on 28.01.2023. Although the copy of the said supplementary affidavit is not on the record but counsel has made available a copy of the same from his own record.

6. This Court has perused the same. In paragraph-3 of the supplementary affidavit, it is stated that in Title Appeal No. 04 of 2003, the appellants as well as respondents had jointly filed a compromise petition on 10.09.2004 in the learned court below. In paragraph '4' of the supplementary affidavit, it is stated that after filing of the compromise petition, when the matter was taken up on 16.03.2016 neither the appellants nor the respondents were present to press the Title Appeal no. 04 of 2003. It is for this reason that the appeal was dismissed for non-prosecution.

7. Learned counsel for both the sides have jointly submitted before this Court that they have entered into a



compromise and they are still willing to appear in the learned court below in support of the said compromise petition. It is, therefore, their submissions that in the interest of justice, in order to settle the lis for all the times to come, the interest of justice requires that the Title Appeal No.04 of 2003 be resorted.

8. Having heard learned counsel for the parties and on perusal of the record, this Court finds that by the impugned order dated 16.03.2016, the learned court below has dismissed the restoration application by taking note of the fact that the parties have entered into a compromise and they can still take up this issue through the Lok Adalat. In the opinion of this Court, once the parties had brought it to the notice of the learned court below that they had entered into a settlement, there was no reason for the court below to refuse restoration of the appeal and either to record the compromise in the appeal itself in accordance with law and pass a consent decree or to send the records of the same to the Lok Adalat for recording a compromise in accordance with law. The learned court below has erred in rejecting the restoration application.

9. The impugned order is, therefore, set aside. The restoration application being Miscellaneous Case No.01 of 2014 is hereby allowed. As a result of this, the Title Appeal No. 04 of



2003 gets restored to its original file. The learned court below shall fix a date in the said appeal and informed the same to the parties or their respective counsels for taking further steps.

10. This appeal is allowed.

11. Let the supplementary affidavit which is said to have been filed on 28.01.2023 in the Registry be placed on record.

(Rajeev Ranjan Prasad, J)

Brajesh Kumar/-

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