

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1414 of 2019

1. Amir Chaudhary @ Amir Prasad Chaudhary, Son of Late Kamleshwari Chaudhary, Resident of Mohalla-Nandlal Mishra Lane Bari Khanjarpur, Tilkamanjhi, P.O.-Khanjarpur, Police Station-Barari, in the town and District-Bhagalpur.
2. Rajesh kumar, Son of Amir Chaudhary, Resident of Mohalla-Nandlal Mishra Lane Bari Khanjarpur, Tilkamanjhi, P.O.-Khanjarpur, Police Station-Barari, in the town and District-Bhagalpur.
3. Shailesh Kumar, Son of Amit Chaudhary, Resident of Mohalla-Nandlal Mishra Lane Bari Khanjarpur, Tilkamanjhi, P.O.-Khanjarpur, Police Station-Barari, in the town and District-Bhagalpur.
4. Chandana Kumari, Daughter of Amit Chaudhary, Resident of Mohalla-Nandlal Mishra Lane Bari Khanjarpur, Tilkamanjhi, P.O.-Khanjarpur, Police Station-Barari, in the town and District-Bhagalpur.

... .. Petitioner/s

Versus

Satish Prasad Mishra, Son of Late Tarkeshwar Mishra, Resident of Mohalla-Tilkamanjhi, Police Station-Barari, in the District and Town of -Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashutosh Jha, Advocate Mr. Narendra Pandey, Advocate Mr. Avinav Kumar, Advocate
For the Respondent/s	:	Mr. Bijoy Kant Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 16-03-2023

Heard learned counsel for the parties.

This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 27.07.2019, passed by learned Additional District Judge-VIIth, Bhagalpur in Miscellaneous Appeal no. 5 of 2011, whereby the court below allowed the restoration of the Title Appeal No. 125 of 2007 on the cost of Rs. 5500/- (Rupees five



thousand five hundred only).

Learned counsel for the petitioners submits that sufficient opportunities were given to the respondent for his appearance but he failed to appear in the case and due to his fault the title appeal was dismissed and application for restoration of the respondent ought to have been rejected.

Learned counsel for the petitioners further submits that the respondent failed to explain that when he got the knowledge of the dismissal of the appeal and since the title appeal was dismissed due to laches on the part of the respondent the miscellaneous appeal was liable to be dismissed. He has further submitted that the death of the wife of respondent was occurred later on and the respondent cannot take advantage of the same.

On the other hand, learned counsel for the respondent submits that Title Appeal was dismissed on 28.09.2011 and on getting the knowledge of the said facts the respondent filed the application on 08.11.2011 for restoration of the same.

It is further submitted that wife of respondent was ill and he was busy in her treatment. He had gone to Delhi for the same and was engaged in long-term treatment of his wife who later on died of her illness and due to this reason the respondent



was unable to appear before the court and to do proper pairvi and there was no deliberate latches on his part for non-appearance.

Having heard the learned counsel for the parties and considering the materials available on record including the impugned order, it appears that the appeal filed on behalf of the petitioners was dismissed for default on 28.09.2011 and the restoration application was filed on 08.11.2011. The learned court below after taking evidence on behalf of the parties and considering the facts and circumstances of the case allowed the said restoration application with cost of Rs. 5500/- (Rupees five thousand five hundred only).

Law is well settled that the procedures are handmaid and not the mistress. It is lubricant and not a resistance. Justice is the goal. In the present case, the respondent explained the reason for not appearing before the appellate court and he has after getting the knowledge of dismissal of appeal filed the restoration application. It is not in dispute that the wife of the opposite party was ill and later on she died.

In view thereof, I do not find any illegality for interference by this court under Article 227 of the Constitution of India and this miscellaneous application is liable to be dismissed.



Accordingly, the instant Civil Miscellaneous
Jurisdiction Application is hereby dismissed.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.03.2023
Transmission Date	

