

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Jurisdiction Case No.363 of 2020**

**In**  
**SECOND APPEAL No.25 of 2008**

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1. Ram Parichhan Pandey @ Parchhan Pandey, not available resident of Village- Bishanpur Ador, P.S.- Sonbarsa, Dist.- Sitamarhi.
  2. Nagendra Sah, Son of Kheria Sah, resident of Village- Dostiya, P.S. Sonbarsad, District- Sitamarhi.

... .. Petitioner/s

Versus

1. Jagdish Raut Son of Late Saryu Raut, resident of Village- Bhataulia, Police Station- Bathnaha, District- Sitamarhi.
2. Ram Dulari Devi, Wife of Raghunath Gai, resident of Village - Bhataulia, Police Station- Bathnaha, District- Sitamarhi.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Gautam Kumar Yadav, Advocate  
For the Opposite Party/s : Mr.

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

4      11-01-2024

**Reg: Interlocutory Application No.01 of 2022**

1. The present I.A. has been filed for condoning the delay of 168 days in filing the connected restoration petition, bearing MJC No.363 of 2020.

2. The learned counsel for the petitioners has submitted that the aforesaid Second Appeal No.25 of 2008 was listed on 29.10.2015, before a co-ordinate Bench of this Court under the Heading 'For Orders on Office Notes' and the petitioners herein were granted two weeks' peremptory time to take steps for fresh service of appeal notice on the respondent no.1, however, since the counsel for the petitioner had not



appeared on the said date, the petitioner was not having any knowledge of the said order dated 29.10.2015, as such the connected appeal stood dismissed for default qua the respondent no.1 on 21.11.2015, on account of non-compliance of the peremptory order dated 29.10.2015.

3. The learned counsel for the petitioners has further submitted that again the aforesaid appeal was listed, before a co-ordinate Bench of this court on 11.07.2019, under the heading 'For Orders on Officer Notes', however, on the said date, the appeal as a whole was dismissed, whereafter the petitioners acquired the knowledge, regarding dismissal of the aforesaid appeal and then the petitioners had made enquiry from their previous counsel, but no convincing reply was given, however, they had then taken away the file from the earlier counsel and handed over the entire brief to the present counsel, who had then gone through the records and suggested for filing a restoration petition, which was then drafted and filed immediately on 23.01.2020. Thus, it is submitted that there has been no deliberate or intentional latches on the part of the petitioners herein and there is sufficient cause to condone the delay in filing the present restoration petition.

4. Having heard the learned counsel for the petitioners



and having gone through the averments made in the present petition, this court finds that sufficient cause has been shown by the petitioners so as to warrant condonation of delay in filing of the present restoration petition.

5. Accordingly, the present I.A. i.e. I.A. No.01 of 2022 is allowed and the delay, which has occurred in filing the present restoration petition, is condoned.

**Reg: MJC No.363 of 2020**

6. The present petition has been filed for restoring an appeal bearing Second Appeal No.25 of 2008, which has stood dismissed on 21.11.2015 on account of non-compliance of the peremptory order dated 29.10.2015.

7. The learned counsel for the petitioners has submitted that on account of certain personal difficulty, the learned counsel for the petitioners herein, could not appear when the aforesaid appeal was called out for hearing on 29.10.2015, hence the peremptory order dated 29.10.2015, granting two weeks time to the appellants therein to take steps for fresh service of notice upon the respondent no.1 could not be complied with on account of want of information, hence a sympathetic view be taken and the aforesaid appeal be restored to its original file. It is further submitted that since no notice had



been issued to the opposite parties in the aforesaid second appeal, it is not necessary to issue notice to them in the present restoration petition. Nonetheless, it is submitted that the petitioner is ready to comply with such conditions as may be deemed fit and proper to be imposed by this Court.

8. Having regard to the facts and circumstances of the case and considering the submissions made by the learned counsel for the petitioners, I deem it fit and proper to direct for restoration of the aforesaid Second Appeal No.25 of 2008 to its original file, however, subject to the petitioners depositing a sum of Rs.15,000/- with the Patna High Court Legal Services Committee, Patna, within a period of two weeks from today and furnishing the receipt thereof before the Registry of this Court.

9. The present petition stands disposed off on the aforesaid terms.

**(Mohit Kumar Shah, J)**

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