

CIVIL REVISION No.90 of 2015

- Petitioner/s

Versus

- Opposite Party/s

For the Petitioner/s : Mr. Dharmendra Kumar Sinha, Advocate
For the Opposite Party/s : None

For the Opposite Party/s : None

ORAL ORDER

10 30-04-2024 This Civil Revision Application has been directed
against the order dated 09.06.2015 passed by the Munsif, 1st,
Gaya, in Miscellaneous Case No.22 of 2015 whereby the said



Miscellaneous Case has been dismissed as not maintainable.

2. Earlier, notices were issued to the opposite parties, but they did not appear even after valid service of notice.

3. Learned counsel for the petitioners submits that the original petitioner-plaintiff filed Title Suit No.73 of 1999 in the Court of the Munsif, 1st, Gaya, against the defendants-opposite parties for declaration of title and removal of encroachment i.e., the constructions made by the defendants and also for mandatory injunction. It is further submitted that the said case proceeded after its admission. However, the same was dismissed in default on 25.04.2013. The original petitioner-plaintiff filed Miscellaneous Case No. 03 of 2013 under Order IX Rule 9 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure along with limitation petition for restoration of Title Suit No.73 of 199 to its original file and number. Further submission is that after summons, defendant nos. 3 to 5 appeared in the suit and the trial Court was pleased to fix the date for evidence on 25.04.2013. Thereafter, the original petitioner-plaintiff fell ill and was unable to move. He was bed-ridden from 25.04.2013 and, thus, he was prevented to adduce evidence due to illness on account of Diabetes. He was prevented to appear in the Court and adduce evidence. On the



advice of the doctor, he came to Court on 16.05.2013 and contacted his counsel and learnt that the suit was dismissed on 25.04.2013. Thereafter, on 17.05.2013, the petitioner filed requisites for certified copy of the order which was delivered to him on 05.07.2013. Thereafter, the petitioner filed Miscellaneous Case No. 03 of 2013. The said Miscellaneous Case was admitted for hearing on 03.08.2013. On 21.09.2013, the petitioner filed requisites for issuance of summons and the case was directed to be put on 16.11.2013 and on that date the office was directed to issue summons to the Opposite Parties. On 18.01.2014, it was found that in the summon, the name of the opposite party has been mentioned as 'Usha Devi', but in the Miscellaneous Case name of the opposite party has been mentioned as "Uska Devi" as a result of which summons could not be issued and direction was given to correct the cause title and file fresh summons for issuance of the same. On 05.04.2014, an application was filed under Order VI Rule 17 of the Code of Civil Procedure for necessary amendment/correction in the cause title with regard to name of the opposite party, Usha Devi. The prayer was allowed and the case was adjourned to 03.05.2014. On 03.05.2014, the original petitioner appeared but the case was ordered to be put up on 24.05.2014



and thereafter several dates were fixed for hearing. On 16.08.2014, the petitioner again appeared and the case was adjourned to 20.09.2014 for appearance of the opposite parties. Thereafter, some adjournments were given due to non-availability of the Presiding Officer. On 18.04.2015, attendance on behalf of the petitioner was filed, but nobody appeared on repeated calls, as a result of which the case was dismissed in default holding that no direction could be given to issue fresh summon as none was appearing on repeated calls. Thereafter, on 14.05.2015, the petitioner filed Miscellaneous Case No.22 of 2015 for restoring Miscellaneous Case No.03 of 2013 which has been dismissed as not maintainable.

4. Learned counsel for the petitioners submits that where the application under Order IX Rule 9 of the Code of Civil Procedure for setting aside the order of dismissal of suit for default is itself dismissed for default, an application under Section 151 of the Code of Civil Procedure for restoration of application under Order IX Rule 9 of the Code of Civil Procedure is maintainable. Reliance has been placed on the judgment in the case of ***Ramendra Nath Bose and others Vs. Birendra Nath Bose and others*** reported in ***AIR 1979 Patna 173***. In the said judgment, it has been held that *even though a*



petition under Order IX Rule 9 of the Code of Civil Procedure is dismissed for default, a petition under Section 151 of the Code of Civil Procedure is maintainable in view of the decision of the Full Bench of this Court in Civil Revision No.713 of 1970 (Bajrang Rai Vs. Ismail Mian dated 12th May, 1977) [AIR 1978 Patna 339]. In that case, it has been held that where an application under Order IX Rule 13 of the Code of Civil Procedure has been dismissed for default, an application under Section 151 of the Code is maintainable for restoring an application under Order IX Rule 13 of the Code of Civil Procedure. The same analogy will apply in the present case.

5. In the present case, application bearing Misc. Case No. 03 of 2013 under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure was dismissed in default on 18.04.2015 and on 14.05.2015 the original petitioner applied for restoration of Misc. Case No.03 of 2013 by filing a petition under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure. The learned Court below rejected the petition filed under under IX Rule 9 read with Section 151 of the Code of Civil Procedure as not maintainable.

6. In view of the principle laid down by this Court in the case of **Ramendra Nath Bose** (supra), the impugned order



dated 09.06.2015 passed by the Munsif, 1st, Gaya, in
Miscellaneous Case No.22 of 2015 is hereby set aside and the
matter is referred back to the Court concerned for fresh hearing
on the petition filed by the petitioner bearing Miscellaneous
Case No. 22 of 2015.

7. In the result, the application stands allowed.

(Khatim Reza, J)

J. Alam/-

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