

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No. 81 of 2016

In
Civil Writ Jurisdiction Case No.4784 of 2015

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1. Gautam Prasad @ Gootam Prasad and Anr son of Late Ramlal Koery Resident of village- Katharia, P.O.- Barahima, P.s.- Mohammadpur, District- Gopalganj
 2. Oshihar Ahir @ Oshihar Rai son of Late Lochan Ahir, Resident of village- Rampurva Tola Katharia, P.o. Barahima, P.S. Mohammadpur, Dist. Gopalganj

... .. Petitioner/s

Versus

1. Wakil Rai and Ors
2. Sipahi Rai
3. Master Rai All are sons of Late Hira Raut, Resident of Katharia, P.O.- Barahima, P.s.- Mohammadpur, District- Gopalganj
4. Chhotelal Raut son of Late Bira Raut
5. Shankar Raut
6. Ramanad Raut Both 5 and 6 are sons of Late Faujdar Raut
7. Jhagru Raut
8. Ramnath Raut Both 7 and 8 are sons of Late Baldev Raut, all are resident of village- Rampurva Tola Katharia, P.O. Barahima, P.S.- Mohammadpur, District- Gopalganj

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mira Kumari

For the Opposite Party/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

15 06-02-2025 Heard.

2. This review application has been filed against the order dated 08-12-2015 passed in CWJC No. 4784 of 2015 whereby the writ petition filed by the petitioners was dismissed.

3. Brief facts for appreciation of this review



application is that the Execution Case No. 03 of 1997 filed by the respondents was dismissed, in default by the learned Munsif, Gopalganj vide order dated 18-04-2009. Subsequently, the learned Munsif recalled his order vide his subsequent order dated 16-04-2013 which was impugned in CWJC No. 4784 of 2015.

4. Learned Munsif while recalling his earlier order of dismissal in default has observed that the order of dismissal, in default was mistaken one as it has been delivered during operation of stay order passed in Title Appeal No. 65 of 1997/2 of 2009. The learned Munsif has mentioned in his order that exercising his jurisdiction under Section 151 of the CPC, he recalled that order. The co-ordinate Bench vide order dated 08.12.2015 in (C.W.J.C. No. 4784 of 2015) did not interfere with the order of the Munsif and dismissed the writ application.

5. The learned Munsif could not notice the fact that Title Appeal No. 65 of 1997 was itself dismissed on 22-01-2011 as such the order of stay was not existing on the day of recall of the dismissal order passed by the learned Munsif.

6. Learned counsel for the review petitioners has submitted that the order of the co-ordinate Bench is an error apparent on the face of record since it is in utter ignorance of the



decision of Hon'ble Supreme Court in the case of ***Damodaran Pillai and Ors. Vs. South Indian Bank Limited (AIR) 2005 SC 3460*** in which the Hon'ble Supreme Court has held that if an execution application is dismissed, in default under Order XXI Rule 105(2), the limitation for filing restoration thereof has been provided under Rule 106(3) and the 30 days limitation provided under Rule 106(3) is inextendable, either under Section 5 of the Limitation Act or under Section 151 of the CPC. He submits that Section 5 of the Limitation Act, 1963 is not applicable in the proceedings under Order 21 of the CPC. It has been submitted by the learned counsel that even exercising the jurisdiction under Section 151 of the CPC, the delay cannot be condoned because specific provisions of limitation has been provided under Rule 106(3). It is settled law that when there is specific provisions under the statute, the jurisdiction under Section 151 of the CPC cannot be invoked.

7. Learned counsel for the respondents has submitted that he was not given opportunity of being heard before the writ court and it was dismissed at the stage of admission itself.

8. So far as submission of the learned counsel for the respondents that the writ petition was dismissed at the stage of admission itself and he was not given opportunity of being



heard is not tenable since the order of dismissal was not against him rather it was in his favour.

9. In my view, the previous order of this Court dated 08.12.2015 passed in CWJC No. 4784 of 2015 is contrary to the decision of Hon'ble Supreme Court in the case of ***Damaodaran Pillai (Supra)***. As such, that order is an error on the face of record, which is reviewed under Order LXVII of the CPC.

10. Considering the above-mentioned facts and circumstances, the order dated 08.12.2015 passed by a co-ordinate Bench (then His Lordships was) in CWJC No. 4784 of 2015 is set aside and the review petition is ***allowed***.

(Nawneet Kumar Pandey, J)

A.K.V.//-

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