

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2611 of 2023

In
SECOND APPEAL No.323 of 2018

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Chandra Deo Chaudhary S/o Late Fauzdar Chaudhary Resident of Village
Sawal Hata, P.O.-Mahmoodpur, P.S. Barharia, District- Siwan.

... .. Petitioner/s

Versus

1. Ramesh Chaudhary Son of Late Balister Chaudhary Resident of Village-
Swal Hata, P.O.-Mahamoodpur, P.S.-Barharia, District-Siwan
2. Dhanesh Chaudhary Son of Late Balister Chaudhary Resident of Village-
Swal Hata, P.O.-Mahamoodpur, P.S.-Barharia, District-Siwan
3. Musmat Sumitra Devi W/o Late Govind Rai Resident of Village-Bangara
Buzurg, P.S.-Barharia, District-Siwan
4. Vijay Kumar Singh Son of Late Govind Rai Resident of Village-Bangara
Buzurg, P.S.-Barharia, District-Siwan
5. Sanjay Kumar Singh Son of Late Govind Rai Resident of Village-Bangara
Buzurg, P.S.-Barharia, District-Siwan
6. Mananjay Kumar Singh Son of Late Govind Rai Resident of Village-
Bangara Buzurg, P.S.-Barharia, District-Siwan
7. Manju Devi D/o Govind Rai Resident of Village- Indawli, P.S.-Davau,
District-Siwan.
8. Neela Devi D/o Late Govind Rai, W/o Kanta Singh Resident of Village-
Jagdishpur, P.S. Jamo Bazar, District-Siwan.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Vijay Shanker Tiwari, Adv.
For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

4 24-01-2025 Heard learned counsel for the petitioner.

2. This application has been filed on behalf of the
petitioner for restoration of S.A. No. 323 of 2018 which was
dismissed for non-compliance of the peremptory order dated
06-01-2023.

3. Learned counsel for the petitioner submits that



petitioner has already complied the order dated 18-07-2024 passed in the present application and removed the remaining defects as pointed out by the office on 23-07-2024 itself in Second Appeal No. 323 of 2018. Further, the office has reported that S.A. No. 323 of 2018 still appears to be pending, after expiry of time, as per computer status. Hence, the said appeal is deemed to be dismissed for non-compliance of order dated 10-11-2022.

4. The petitioner has complied the peremptory order dated 06-01-2023, but after expiry of time granted by this Court, and as such, the Second appeal stood dismissed for non-compliance of the peremptory order and, therefore, the present restoration application is maintainable.

5. Learned counsel for the petitioner submits that though the earlier counsel for the petitioner had handed over 'No objection' to the counsel representing the petitioner, namely Vijay Shanker Tiwari during *covid* period, but due to *covid* pandemic he was unable to file '*vakalatnama*'. Further submission is that the matter was listed on 06-01-2023 through virtual mode before this Court under the heading for 'Office notes', but due to non-filing of the fresh '*vakalatnama*', name of the counsel representing the petitioner did not appear in the list,



as a result of which, he failed to receive the link to join the online court proceeding. It is further submitted that due to *bona fide* mistake, he has failed to file fresh '*vakalatnama*' and did not comply the order dated 06-01-2023 in time.

6. In view of the submission of learned counsel for the petitioner and explanation given in the restoration application, I am satisfied that the petitioner was prevented by sufficient cause from not complying the peremptory order passed by this Court in time.

7. Accordingly, application for restoration is allowed and S.A. No. 323 of 2018 is restored to its original file and number.

(Khatim Reza, J)

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