
(2017) 04 JH CK 0046
In the Jharkhand High Court
Case No : 6023 of 2015

Binod Chaudhary, & Antr.

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 151](#), [Order 1 Rule 10\(2\)](#), [Order 41 Rule 20](#) - Saving of Inherent powers of Court

Citation : (2017) 04 JH CK 0046

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Sanjay Prasad

Final Decision : Dismissed

Judgement

1. Heard counsel for the petitioners.

2. Learned Court of District and Additional Sessions Judge-III, Chatra has, by the impugned order dated 17.09.2015 passed in Title Appeal No. 21/2011, rejected the petition dated 09.05.2015 under order 1 Rule 10(2) read with Section 151 of Civil Procedure Code preferred by the petitioners herein, who are said to be proforma Respondents in Title Suit No. 16/2001. Operative portion of the impugned order reads as under:

" Heard Both parties and perused the case records it appears that two petition U/o 1 Rule 10(2) CPC were filed on 18.09.2014 and 15.01.2015 on behalf of the petitioners which were not pressed on 04.04.2015. It appears that they have further filed third petition date 09.06.2015 under order 1 R 10(2) CPC to add

their names in appeal. From perusal of original record of Title Suit No. 16/2001 it appears these petitioners were the pro-forma defendant number 4-7 in the suit and from the perusal of order sheet dated 31.03.2003 it appears that sufficient time was given to the petitioners to file written statement but the petitioners have not filed written statement, thereafter, the court has passed the order to proceed ex-parte against these petitioners. From perusal of record it appears that these petitions never tried to recall the exparte order, which was passed against them. According to Order 41 Rule 20(2) it is provided that "No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the court, for reasons to be recorded, allow that to be done on such terms as to costs as it thinks fit". From the perusal of aforesaid provision that the court has power to implead a party in the appeal subject to some conditions but it clear states that no person can be added a respondent after the expiry of period of the limitation. Therefore, title appeal has been filed on 29.06.2011 against the

judgment and decree on 30.07.2011 and 16.08.2011 and petitioner come to the court and file a petition U/o 1 Rule 10(2) CPC on 09.06.2015 it means they have applied to implead as a party after the expiry of the limitation period without applying to condone the period of delay. It is necessary to mention here that the petitioners neither contested in the title suit nor they have filed written statement and they have never tried to recall the order passed by the court against them to proceed exparte. Thereafter they have filed petition U/o 1 R 10(2) CPC twice and same have not pressed without any reason. It shows that the petitioners are not serious to contest the appeal. From perusal of the record the conduct of petitioners are not come before the court with clean hand and considering the facts and circumstances of the case and provisions of the CPC it appears that they are not necessary party. Hence, petition dated 09.06.2015 is hereby rejected. This is an old appeal and both parties are directed to co-operate to the court for disposal of the title appeal. The Case is fixed on 23.09.2015 for further step."

3. Apart from the impugned order, none of the pleadings of the suit i.e. plaint, written statement, petition seeking impleadment with explanation for delay in filing

the appeal, have been filed. The impugned order shows that even after sufficient time, these defendants / petitioners had failed to file written statement in title suit

which proceeded ex-parte against them. Appeal was filed on 29.06.2011 against the

judgment and decree dated 30.07.2011 and 16.08.2011. Two petitions dated 18.09.2014 and 15.01.2015 under Order 1 Rule 10(2) of Civil Procedure Code were

filed on behalf of the petitioners, but were not pressed. It appears that on 04.04.2015, these two petitions were dismissed as not pressed. Order sheet is not on

record. This is a third petition filed on 09.06.2015 under Order 1 Rule 10(2) again to add their names in appeal. Learned Appellate Court has taken note of the provisions of Order 41 Rule 20(2) of Civil Procedure Code and found no explanation on the part of the petitioners for the huge delay in seeking their addition.

Consideration of all these factors have persuaded the Learned Court to reject the petition.

4. As noted herein-above, in the absence of any supporting documents and previous orders passed also on such petition by the Appellate Court or explanation

for the delay in moving such an application, this Court does not find any reason to interfere in the matter. Writ petition is accordingly dismissed.