

(2005) 07 JH CK 0006

In the Jharkhand High Court

Case No : CMP No. 270 of 2004 with LA. No. 1413 of 2004

Kadmi Mandalain and Another

APPELLANT

Vs

Nomita Panjarin and Others

RESPONDENT

Date of Decision : 15-07-2005

Acts Referred:

Citation : (2005) 3 BLJR 1915 : (2005) 4 JCR 400

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Amar Kumar Sinha, for the Appellant; D.C. Mishra and S.P. Jha, for the Respondent

Judgement

Narendra Nath Tiwari, J.—The appellants-petitioners in this interlocutory application pray for condonation of delay in filing the CMP No. 270 of 2004.

2. It has been stated that the Second Appeal No. 204 of 1987 (P) was filed in Patna High Court and it was transferred to this Court. The said second appeal was listed under the heading "for orders" on 3.09.2003 and one week's time was granted for taking fresh steps for service of notice on substituted heirs of deceased respondent No. 2. Appellants-petitioners were not aware about the transfer of the second appeal and they could not engage a counsel to attend the case at Ranchi. Subsequently, the appellants-petitioners, on search, could trace out the case and by that time the peremptory time had expired and the second appeal was dismissed. The appellants-petitioners then filed CMP No. 270 of 2004 as soon as they came to know about the dismissal. The delay is not at all intentional.

3. Mr. D.C. Mishra, learned counsel appearing on behalf of the opposite party Nos. 1, 2 and 3 and Mr. S.P. Jha, learned counsel appearing on behalf of the opposite party No. 2 vehemently opposed this interlocutory application. Learned counsel submitted that the very conduct of the appellants-petitioners shows their negligence as they could not trace the case for quite a long time. As a matter of

fact the appellants-petitioners were never vigilant and diligent in prosecuting the case. The said opposite parties, however, have not filed any reply on affidavit to controvert the statements made in the petitioners' application.

4. Considering the statements made in the interlocutory application as well as submissions made by the learned counsel, I am of the view that the appellants-petitioners have explained sufficient reasons for not filing the application within time under the circumstances beyond the control of the appellants-petitioners. In that view this interlocutory application is allowed. Delay in filing the CMP No. 270 of 2004 is condoned.

5. This interlocutory application is, accordingly disposed of.

CMP No. 270 of 2004 :

1. In this civil miscellaneous petition, appellants-petitioners have prayed for restoration of Second Appeal No. 204 of 1987 (P).

2. It has been submitted that the said appeal was admitted by the Patna High Court long back and after re-organisation of the State, the same was transferred to this Court. However, no notice was ever sent to the appellants-petitioners regarding the said transfer of the case. Appellants-petitioners, subsequently, themselves made their endeavour to trace out the case when the counsel at Patna informed them in the month of July, 2004 that their case along with other cases was transferred to this Court. It has been submitted that the petitioners are females and are illiterate villagers. It has been submitted in their absence in the said circumstances this Court passed the peremptory order dated 3.9.2003 directing the appellants-petitioners to take the requisite steps, but due to the said reason, they could not know and by that time no lawyer was engaged by them at Ranchi. It has been submitted that as soon as they came to know about the said order and dismissal of the second appeal, they immediately took step and filed this civil miscellaneous petition.

3. Mr. D.C. Mishra, learned counsel appearing on behalf of the opposite party Nos. 1, 2 and 3 and Mr. S.P. Jha, learned counsel appearing on behalf of the opposite party No. 4, however, contested the petition stating that there was wilful negligence and laches on the part of the appellants-petitioners in not keeping correct information about the case. According to the learned counsel from the statements made in the petition itself it is evident that there was deliberate negligence and laches on the part of the appellants-petitioners in not keeping proper track of the case. However, the statements made in the civil miscellaneous petition have not been controverted by filing any counter affidavit or reply by the opposite parties.

4. Considering the statements made in the petition and submissions made by the learned counsel, I am of the view that there is no wilful negligence or laches on the part of the appellant-petitioners and that they were prevented from taking steps in the case within the peremptory prescribed time which is the

circumstance beyond their control. This civil miscellaneous petition is, thus, allowed. Second Appeal No. 204 of 1987 is restored to its original file. One week's further time is allowed to the appellants-petitioners to take proper steps for service of notice on newly substituted heirs of deceased-respondent No. 2 in the second appeal.

5. This civil miscellaneous petition is, accordingly, disposed of.