

(1970) 05 PAT CK 0020
In the Patna High Court
Case No : Civil Revision No. 385 of 1969

Rajniti Prasad and Others

APPELLANT

Vs

Banarsi Prasad and Others

RESPONDENT

Date of Decision : 06-05-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 3, 104, 151

Citation : AIR 1971 Patna 123

Hon'ble Judges : N.L. Untwalia, J

Bench : Single Bench

Advocate : J.C. Sinha, Udaya Sinha and Lakhan Kumar Singh, for the Appellant;
Sachidananda and Manmohan, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—The miscellaneous case filed by the opposite party under Order IX Rule 13 of the CPC (hereinafter called the Code) was dismissed for default on the 12th November 1968. It has been restored at their instance in the exercise of the inherent power of the Court, The plaintiffs have come up in revision.

2. The point urged on behalf of the plaintiff-petitioners is that in view of the Full Bench decision of this Court in the case of Doma Choudhary and Others Vs. Ram Naresh Lal and Others, , the Court below had no power to restore the miscellaneous case dismissed for default in exercise of its inherent power, as the order dismissing the case was appealable. In my opinion, the contention, on the facts of this case, is not sound. The applicants under Order IX, Rule 13, of the Code had applied for amendment of their petition. They were directed to move this petition. They failed to move this petition on the 12th November, 1968. For this the petition could be dismissed, but not the miscellaneous case itself. Then the other default was that the Talbana etc., For issue of notice of the miscellaneous case, as required by previous several orders, was not filed. The miscellaneous case, surely, could be dismissed for this default, but, then, in my opinion, this is not a dismissal of the miscellaneous case for the non-appearance

of the applicants at the time of the hearing, when the case was called out for hearing. This dismissal is just like a dismissal of the case under Order IX, Rule 3 of the Code, although it is not expressly so. There is no other rule and, therefore, the dismissal must be attributed to the exercise of the inherent power of the Court. That being so, such an order of dismissal is not appealable, and this order of dismissal can be recalled in exercise of the inherent power of the Court, if proper case has been made out, and such a case has (not Ed.) been made out, in the opinion of the Court below.

3. In the result, the application fails and is dismissed, but there will be no order as to costs.