

In the Court of Principal District Judge, Jehanabad.

Misc. Civil Appeal No. 08/2019
Zila Parishad Vs. State of Bihar & Ors.

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Zila Parishad, Jehanabad through its Secretary cum Chief Executive Officer, cum Deputy
Development Commissioner (D.D.C.) Jehanabad, P.O. +P.S.+Distt.- Jehanabad.

... Appellant

Vrs.

1. State of Bihar through Superintendent of Survey Gaya, Nawada, Aurangabad,
Jehanabad cum Collector, Jehanabad.
2. Ranjeet Kumar,
3. Sanjay Kumar,
4. Vinay Kumar,
All sons of- Late Guru Narayan Sao, R/o Mohalla- Arwal More, P.G. Road,
Jehanabad Town, P.O.+P.S.+Distt.- Jehanabad.
5. Sharda Devi, Wife of- Rajeev Ranjan, Daughter of- Late Guru Narayan Sao, R/o Mohalla-
Purani Bijali Colony, Jehanabad Town, P.O.+P.S.+Distt.- Jehanabad.
6. Sangeeta Devi, Wife of- Arbind Kumar, Daughter of- Late Guru Narayan Sao, R/o Mohalla-
Nauwa Garhi under Gaya In Gali, In front of Maruti Garage, Gaya, P.S.-
Kotwali, Distt.- Gaya.
7. Dinita Devi, Wife of- Mithilesh Kumar, Daughter of- Late Guru Narayan Sao, R/o
Mohalla- Campus of P.C. Science College, Kathari Bagh, P.O.+P.S.+Distt.- Chapra (Saran)
Pin- 841301.
8. Sidhnath Prasad,
9. Deepak Kumar,
Both sons of- Late Hari Narayan Sao, R/o Mohalla- Arwal More, Jehanabad Town. At present
Mohalla- Shivjee Path, In front of Madarsa Arbia Islamiya, Jehanabad Town, P.O.+P.S.+Distt.-
Jehanabad.
10. Raju Prasad,
11. Manoj Kumar,
12. Rajesh Kumar,
13. Mukesh Kumar,
14. Pankaj Kumar,
10 to 14 are sons of- Late Baijnath Sao, R/o Mohalla- Arwal More, Jehanabad Town, P.O.
+P.S.+Distt.- Jehanabad.
15. Binni Devi, Wife of- Jawahar Lal Gupta, Daughter of- Late Baijnath Sao, R/o Vill.- Telhara,
P.O.+P.S.- Telhara, Distt.- Nalanda. At present Mohalla- Raja Bazar, Jehanabad Town, P.O.
+P.S.+Distt.- Jehanabad.
16. Laxmi Sao, Son of- Late Shiv Gulam Sao.

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17. Ranjan Kumar,

17(a). Shree Nath Kumar,

17(b). Sarban Kumar,

All sons of- Late Kishori Prasad.

18. Ayodhya Prasad, Son of- Late Shiv Gulam Sao, R/o Mohalla- Arwal More, P.G. Road,

Jehanabad Town, P.O.+P.S.+Distt.- Jehanabad.

... Respondents

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A P P E A R A N C E

Ld. counsel for the Appellant :- Sri Dilip Kumar Sinha, Ld. Advocate.

Ld. counsel for the Respondent No. 1 (State) :- Sri Shachitanand Sharma, Ld. G.P.

Ld. counsel for the other respondents :- Sri Ramdayal Sharma, Ld. Advocate

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**PRESENT:- BRAJESH KUMAR,
PRINCIPAL DISTRICT JUDGE, JEHANABAD.**

Dated 24th Day of March, 2026

J U D G M E N T

1. This appeal is directed against the order dated 06/07/2019 passed by the learned Munsif, Jehanabad in Misc. case no. 2/2017 whereby and where under the learned Munsif has dismissed Misc. case no. 2/2017 refusing to restore Misc. case no. 2/2012.

2. The brief facts leading to this appeal are that the appellant filed title suit no. 120/2000 in the court of the learned Munsif, Jehanabad which was dismissed for default. Thereafter the appellant filed Misc. case no. 2/2012 for restoration of title suit no. 120/2000 which was also dismissed for default on 11/03/2013 and for restoration of this Misc. case no. 2/2012, the appellant filed Misc. case no. 1/2014 which was allowed vide order dated 05/06/2015 by the learned Munsif, Jehanabad at the cost of Rs. 1000/- only and the original Misc. case no. 2/2012 was restored back for hearing on 26/06/2015 with direction to the appellant to take steps for the appearance of defendants through fresh summons within a week of the said order. Thereafter, Misc. Case No. 2/2012 was restored, but again the appellant left *pairvi* in Misc. Case No. 2/2012 and the said Misc. case was again dismissed for default on 27/03/2017. Thereafter the appellant filed Misc. Case No. 2/2017 for

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restoration of Misc. Case No. 2/2012. After hearing both the parties, the learned Munsif, Jehanabad dismissed Misc. case No. 2/2017 vide order dated 06/07/2019. This dismissal order is impugned in this appeal.

3. The appellant has challenged the impugned order *inter alia* on the following grounds :-

(i) the impugned order is based on conjectures and surmises and is fit to be set aside.

(ii) the learned lower court has wrongly mentioned that legal heirs of the deceased defendant have also informed the appellant regarding the death of defendant along with their legal heirs, but it is submitted that in Misc. case no. 2/2017, all the legal heirs of deceased defendant have been made parties.

(iii) no any Misc. case no. 2/2014 was filed by the appellant.

(iv) the appellant has fully supported his case and claim before the learned lower court.

(v) the appellant is ready to prove his case, which was not considered by the learned lower court.

(vi) The learned lower court has failed to take into consideration the settled law that substantial justice should not be frustrated on technical grounds and from dismissal of the case, the petitioner sustained substantial loss.

(vii) There is no wilful default and laches on the part of the appellant and due to over hearing the date 28/3/2017 in spite of 27/3/2017 and for this reason proper pairvi could not be done on fixed date.

On these grounds, the appellant has prayed to set aside the impugned order and to restore Misc. case no. 2/2012.

4. I have heard the arguments of both sides.

The learned counsel for the appellant has submitted that in support of his case, the appellant has examined three witnesses namely, A.W. 1 Upendra Kumar, A.W. 2 Abhiram Sharma and A.W. 3 Satyendra Yadav and all these witnesses have supported the case of the appellant and stated that the advocate's clerk had mistakenly listened the date 28.03.2017 and when he filed *hazari* on 28.03.2017, he got knowledge that the case was fixed on 27.03.2017 and dismissed on the same date. He has further submitted that in the present appeal the main point for consideration is that the pairvikar of that Misc. case had knowingly and wilfully not done pairvi on 27.03.2017 or left the pairvi intentionally

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on the date fixed. He has further submitted that in AIR 1989 (Cal) 91, it has been held that the court should take a liberal view, while deciding the question of sufficient cause for absence. He has further submitted that the learned lower court has taken into consideration the previous conduct of the appellant which was done in Misc. case no. 2/2012 and in this respect, it is submitted that the previous conduct of the appellant or negligence had already been condoned and so, the trial court was wrong in taking into consideration the previous conduct of the appellant. He has further submitted that in view of Rule 459 XV (a) and Rule 461 (ii) of Civil Court Rules, this Misc. appeal is maintainable against the impugned order. The learned counsel for the appellant has relied upon the following rulings in support of his case :-

(i) Supreme Today 2007 0 AIR (Jhar) 45, Rajeshwar Singh Vs. Dashrath Rai (C.R. 92 of 2005) decided on 06.28.2006.

(ii) Supreme Today 1979 0 AIR (Pat) 173, Ramendra Nath Bose Vs. Birendra Nath Bose decided on September 25, 1978

(iii) Supreme Today 1989 0 AIR (Cal) 91, Dulal Chandra Vs. Banamali Guchait decided on 02.01.1988

On the other hand, the learned counsel for the respondents has submitted that the respondents have challenged the maintainability of this Misc. appeal against the order dated 6/7/2019 passed in Misc. case no. 2/2017, which was filed by the appellant before the Court of Munsif, Jehanabad to set aside dismissal order dated 27/03/2017 and to restore the Misc. case no. 2/2012 to its original file. It is further submitted that the order passed by the learned lower court is legal, valid and considering all the facts and materials and provision of the law relied and cited from both sides and considering the gross negligence of the appellant. It is further submitted that the order under challenge was passed dismissing Misc. case no. 2/2017 and the Misc. case no. 2/2017 was filed by the appellant U/S. 151 C.P.C. and the order passed by the learned lower court was to be challenged as per law by filing revision. He has further submitted that the background of the order under challenge dated 6/7/2019 passed in Misc. case no. 2/2017 by the learned Munsif, Jehanabad is that the original title suit no. 120/2000 filed by the appellant, was dismissed for default on 09.10.2009 and thereafter the appellant filed a Misc. case no. 2/2012 in the learned lower court to set aside the dismissal order dated 09.10.2009, which was also dismissed on 11.01.2013 due to default. He has further submitted that the appellant had filed Misc. case no. 1/2014 to restore Misc. case no. 2/2012, which was allowed and Misc. case no. 2/2012 was restored, but thereafter again Misc. case no. 2/2012 was dismissed for default, then the appellant filed Misc. case no. 2/2017 and on merit, considering all the facts, evidence and also perverse conduct of the appellant, Misc. case no. 2/2017 was dismissed on 06.07.2019. Thereafter, this Misc. appeal has been filed. He has further submitted that from the bare scrutiny of fact and record of

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lower court, it is clear that the appellant has committed gross negligence in doing proper pairvi and he has not got sufficient cause for restoration of Misc. Case No. 2/2012 and the impugned order is legal, valid and operative. He has further submitted that this appeal has got no merit and is fit to be dismissed. The learned counsel for the respondents has relied upon the following rulings :-

(i) 1978 PLJR 743

(ii) AIR 1958 (Patna) 618

Points for Determination

5. The following points for determination arise in this appeal:-

(i) Is this Misc. appeal maintainable against the impugned order ?

(ii) Has the appellant got sufficient cause for restoration of Misc. case no. 2/2012 ?

(iii) Is the impugned order sustainable and whether it requires any interference by this court in this appeal ?

FINDINGS

6. **Point for determination no. (i)**

(i) Is this Misc. appeal maintainable against the impugned order ?

The appellant has preferred this appeal against the order dated 06.07.2019 passed by the court of Munsif, Jehanabad in Misc. case no. 2/2017 whereby and whereunder, the learned Munsif has dismissed the Misc. case no. 2/2017. The appellant filed Misc. case no. 2/2017 for restoration of Misc. case no. 2/2012 which was dismissed for default on 27.03.2017. It is submitted by the learned counsel for the respondents that this Misc. appeal is not maintainable because from perusal of record, it is clear that initially, title suit no. 120/2000 filed by the appellant in the court of the learned Munsif, Jehanabad was dismissed for default on 09.10.2009 and for restoration of the said title suit, Misc. case bearing Misc. case no. 2/2012 was filed U/o 9, Rule 9 CPC which was also dismissed on 11.01.2013 for default, then the appellant had filed Misc. case no. 1/2014 to restore Misc. case no. 2/2012 which was allowed and Misc. case no. 2/2012 was restored to its original file. He has further submitted that it is also clear from the lower court record that again the appellant was very reluctant and Misc. case no. 2/2012 was dismissed for default on 27.03.2017 and the appellant filed Misc. case no. 2/2017 to set aside the dismissal order and restore to its original file Misc. case no. 2/2012. He has further submitted that Misc. case no. 2/2017 was filed by the appellant only under the provision of law mentioned in Section 151 CPC because it is settled law that any Misc. case is filed to set aside the dismissal order and restore the Misc. case then

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the said Misc. case would be filed under Section 151 CPC which never comes within the purview of Order 43 Rule 1 CPC or under Section 104 CPC as well as the provision of law for filing Misc. appeal in Civil Court as well defined in Rule 461 of the Civil Court Rules of the High Court of Judicature at Patna. On these grounds, he has submitted that this Misc. appeal is not maintainable.

On the other hand, the learned counsel for the appellant has submitted that even if Misc. case no. 2/2017 is taken to be filed under 151 CPC then also this Misc. appeal is maintainable and for this submission, he has relied on Rule 459 XV (a) and Rule 461 (ii) of Civil Court Rules. It is pertinent to refer here Rules 459 and 461 of Civil Court Rules:-

(ii) Miscellaneous Judicial Cases

Rule 459. Separate statements being provided to show applications for the execution of decrees, these will not be included under the head “miscellaneous (Judicial)” cases, and it is intended that such other cases only as required a judicial enquiry or order should be included. The following list shows the cases which are to be entered under this head, and without the special orders of the High Court, no addition may be made thereto :—

(a) Cases under the Code of Civil Procedure.

- (i) Applications under sections 22 and 24 to an Appellate Court to transfer suits, appeals or other proceedings pending in a Subordinate Court.
 - (ii) Applications under Order IX, Rules 4, 9 and 13 and Order XLI, Rules 19 and 21, for the restoration to the file of suit or appeal dismissed on default or decreed ex-parte.
 - (iii) Miscellaneous Civil Proceedings under Order XVI, Rules 12 and 17.
 - (iv) Cases under Section 47.
 - (iv) (a) Applications under Section 95.
- Note.**—Applications for the ascertainment of mesne profits should not be registered as Miscellaneous Judicial cases, but should be regarded as applications made in the course of the trial of the suit, vide Order XX, Rule 12.
- (v) Inquiries under Order XXI, Rule 2, on the application of judgment-debtors as to payments or adjustment alleged to have been made.
 - (vi) Claims to, and objections to the attachment of, attached property under Order XXI, Rule 58, and Order XXXVIII, Rule 8.
 - (vii) Applications under Order XXI, Rules 90 and 91 to set aside a sale in execution of a decree.
 - (viii) Complaints by decree-holders or purchasers under section 74 and Order XXI, Rules 97 and 98 of resistance to possession being given.
 - (ix) Applications under Order XXI, 1[Rule 99 (1)].
 - (x) Commissions under section 76(2) for the examination of witnesses, received from other Courts and executed by the Court.
 - (xi) Applications under Order XXXIII, Rule 1 and Order XLIV, Rule 1 for permission to sue or appeal as a pauper.
 - (xii) Proceedings under 2[Order XXXIX Rule 2(a)], clauses (3) and (4).
 - (xiii) Applications under Order XLVII, Rule 1 for Review of Judgment.
 - (xiv) Applications for a Reference to the High Court under Order XLVI, Rule 7.
 - (xv) Applications under section 144 of the Code of Civil Procedure.

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(xv) (a) Applications under sections 151 and 153 of the Code of Civil Procedure.

(xv) (b) Applications for Garnishee proceedings under 3 [Rules 46-A to 46-I], Order XXI, Civil Procedure Code.

(b) Cases under other Acts.

(xvi) Cases regarding the property of intestates under section 7 of the Bengal Wills and Intestacy Regulation, 1799, in which a claimant appears.

(xvii) Applications for the issue of an injunction under section 6, Bengal Patni Talkus Regulation, 1819.

(xviii) Applications under Part VII of the Indian Succession Act (XXXIX of 1925). (xix) Applications regarding the care of lunatics' estates, and the guardianship of their persons, under the Indian Lunacy Act, 1912.

(xx) Applications under section 47 or section 75 of the Indian Lunacy Act, 1912, for sanction to the sale, etc., of the property of lunatics.

(xxi) Applications for Probates and Letters of Administration under the Indian Succession Act, 1925, except contested cases which must be transferred to the head of suits. See rule 458 ante. (xxii) Inquiries made at the instance of the Collector under clause 5 of section 19H of the Court-fees Act, 1870, as to true value of the property of deceased persons.

(xxiii) Cases under section 59 of the Land Registration Act, 1876.

(xxiv) Cases under section 14 of the Legal Practitioners Act, 1879.

(xxv) Cases regarding redemption and foreclosure of mortgages under section 83 of the Transfer of Property Act, 1882.

(xxvi) Cases under sections 84, 91, 93, 98(8), 99, 153 (last paragraph), 158, 169 and proceedings under sub-sections (5) and (6) of section 163 of the Bihar Tenancy Act, 1885. (xxvi) (a) Proceedings under clauses (a), (b) and (c) of section 15 of the Bihar Restoration of Bakasht Lands and Reduction of Arrears of Rent Act, 1938.

(xxvii) Applications for Succession Certificate under the Indian Succession Act, 1925.

(xxvii) (a) Applications under Sections 7, 8, 9, 11, 12 and 33 of the Arbitration Act, 1940 (Act LX of 1940)2.

(xxviii) Applications under the Guardians and Wards Act, 1890 for certificates of guardianship of minors, or of administration of their property, or, where no previous appointment of a guardian has been made by the Court or applied for, for their return to the custody of their guardians.

Note.—Subsequent proceedings in connection with a guardianship case are to be treated as part of the original case and should not be registered as separate Miscellaneous cases. (xxviii) (a) Applications under Section 8 of the Hindu Minority and Guardianship Act, 1956 (Act 32 of 1956).

(xxix) Cases under Parts III and IV of the Land Acquisition Act, 1894.

(xxx) Miscellaneous Criminal Cases under Sections 195(1) (a), 476, 478 and 480 of the Criminal Procedure Code, 18983.

(xxx) (a) References under Section 146 (1) of the Code of Criminal Procedure, 18983, as amended by Act XXVI of 1955, to decide the question of possession.

(xxxi) Insolvency petitions under the Provincial Insolvency Act, 1920.

Note.—Subsequent proceedings in connection with the same insolvency petition are to be treated as part of the original proceeding, and should not be registered as separate Miscellaneous Cases.

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(xxxii) Application under the Charitable and Religious Trusts Act (Act XIV of 1920). (xxxiii) Application under section 78 of the Village Administration Act, 1922 (III of 1922), and under sections 70 and 73 of the Bihar Panchayat Raj Act (VII of 1948).

Note.—A separate account of these applications should be kept in the register in Form No. (R) 39.

(xxxiv) Cases under the Mussalman Wakf Act, 1923 (XLII of 1923) [Now, Waqf Act, 1995], and applications for the sanction required by the Muhammadan Law for the transfer of Wakf property.

(xxxv) Applications under Section 5 of the Religious Endowment Act, 1863 (XX of 1863).

(xxxvi) [Omitted].

(xxxvii) Applications under section 13 of the Bihar Money-lenders (Regulation of Transactions) Act, 1939 (Bihar Act VII of 1939)**.

(xxxviii) Applications for deposit of money under Sections 15 and 24 of the Bihar Money-Lenders Act, 1938 (Bihar Act III of 1938)**.

(xxxix) Cases arising out of Election Petitions under the Bihar District Election Petitions Rules, 1939.

(xl) [Omitted].

(xli) Cases arising out of Election Petitions under the Bihar Municipal Election Petitions Rules, 1941.

(xlii) [Omitted].

(xliii) Case under Section 82A of the Indian Railways Act, 1890 [G.L. 5/ 52, G.L. 8/55.] (xliv) Applications under sections 28(3), 1[29(3)], 32(3), 43(1), 47 and 48 of the Bihar Hindu Religious Trusts Act (Act I of 1951).

(xlv) Application under section 30 of the Industrial Finance Corporation Act, 1948 (Act XV of 1948).

(xlvi) Applications under section 11B of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947.

(xlvii) Applications under sections 11, 22, 32, 34, 36, 41, 46, 49, 53, 71, 72, 73 and 74 of the Indian Trust Act (II of 1882).

(xlviii) Applications under sections 75, 89, 113, 141, 234, 240 and 614 and cases under sections 118, 144, 163, 196, 219, 304, 307 and 375 of the Companies Act, 1956 (I of 1956)

(xlix) Applications under section 22 of the Hindu Succession Act, 1956.

(l) 2[x x x x].

1[(li) Applications under sections 31 and 31 (1) of the State Financial Corporations Act, 1951.]

2[(lii) Applications under section 11 of the Bihar Panchayat Samitis and Zila Parishads Act, 1961.

(liii) Petition under rule 149 of the Bihar Panchayat Samitis and Zila Parishads (Elections, Co-options and Election Petitions) Rules, 1963.]

3[(liv) Applications under sections 46 and 47 of the Bihar Waqf Act, 1947 (Now, Waqf Act, 1995).]

4[(lv) Applications under section 8 (2) of the Bihar and Orissa Aerial Ropeways Act, 1924.]

5[(lvi) Applications under sections 152 and 242 of the Patna Municipal Corporation Act.]

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Rule 461. The following are classed as Miscellaneous Appeals—

(i) Appeals from orders under section 104 (1) and Order XLIII Rule 1, of the Code of Civil Procedure.

(ii) Appeals in Miscellaneous Judicial Cases.

(iii) Appeals under Section 17 of the Payment of Wages Act, 1936 (IV of 1936).

(iv) Appeals under Section 70, sub-clause 2(b) of the Bihar Hindu Religious Trust Act (I of 1951).

1[(v) Appeals under Section 9 against orders under Sections 5 and 7 of the Public Premises (Eviction or Unauthorised Occupants) Act, 1958.]

2[(vi) Appeals under Section 11 (1) (i) of the Bihar Land Encroachment Act (Act XV of 1956).]

Rule 459 of Civil Court Rules enlists the cases which are to be entered under the heading of Miscellaneous judicial cases and as per Rule 459 (xv) (a), applications under sections 151 and 153 of the CPC are to be entered under the head of Miscellaneous judicial cases.

As per Rule 461 (ii), appeals in Miscellaneous Judicial Cases are to be classed as Miscellaneous appeals. So, a combined reading of Rules 459 and 461 of Civil Court Rules, shows that this Misc. appeal is maintainable.

7. Points for determination nos. (ii) and (iii)

(ii) Has the appellant got sufficient cause for restoration of Misc. case no. 2/2012 ?

(iii) Is the impugned order sustainable and whether it requires any interference by this court in this appeal ?

These two points are interconnected and hence they are taken up together for decision. It is pertinent to mention here that the appellant has preferred this appeal against the order dated 28.04.2017 passed by the learned Munsif, Jehanabad in Misc. case no. 02/2017. The appellant had filed Misc. case no. 02/2017 for restoration of Misc. case no. 02/2012 which was dismissed for default. By the impugned order the learned Munsif has refused to restore Misc. case no. 02/2012 on the following grounds :-

“No cogent and convincing reason has been assigned by the applicant to prove sufficient cause, due to which he was prevented to pursue the proceedings of the aforementioned Misc. case, moreover, the statements made in this Misc. case appear to be baseless and without any merit. There is no proper explanation in the instant Misc. petition, regarding failure of the applicant to take proper steps with regard to substitution of the legal heirs of the deceased defendant when information

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regarding the death of the defendant along with their legal heirs was already given on 01.06.2016.

In the light of aforesaid discussion and having regard to the facts and circumstances of the case, it appears that the petitioner has miserably failed to prove that there was sufficient cause for his non-prosecution in the Misc. case no. 02/2012 and the exercise of inherent power of this court to restore such a Misc. case seems unwarranted.”

Now, this court has to examine as to whether the appellant has got sufficient cause for restoration of Misc. case no. 02/2012 and whether the impugned order refusing restoration of Misc. case no. 02/2012 is sustainable.

It is the case of the appellant that on 14.02.2017 was date fixed in Misc. case no. 02/2012 and the advocate clerk who was doing Pairvi on behalf of the appellant, due to overhearing, noted date in the diary on 28.03.2017, but he was told that date was posted on 27.03.2017. Further case of the appellant is that due to *bona fide* mistake of overhearing of date, substitution petition could not be filed on 27.03.2017, consequently Misc. case no. 02/2012 was dismissed for default.

In Misc. case no. 02/2017, the appellant has examined three witnesses. P.W. 1 Upendra Kumar is advocate clerk who has stated in his examination-in-chief that District Board had filed T.S no. 120/2000 which was dismissed for default on 09.10.2009 and for restoration of T.S no. 120/2000, Misc. case no. 02/2012 was filed. Saryu Baboo, Advocate was engaged on behalf of District Board but he was suffering from paralysis due to which Misc. case no. 02/2012 was dismissed for default. Misc. case no. 01/2014 was filed to restore Misc. case no. 02/2012 by which Misc. case no. 02/2012 was restored. He has further stated that on 14.02.2017, date was fixed in Misc. case no. 02/2012, but due to overhearing the next date was noted as 28.03.2017 in place of 27.03.2017 and the case was dismissed. In his cross-examination, this witness has stated that he had written the date in his diary after hearing the same from “Peshkar” and he does not write date from cause list. This witness has further stated that he does not remember from when he was not doing Pairvi in Misc. case no. 02/2012 and he also does not remember as to whether on 16.12.2016 order for doing proper Pairvi was passed or not.

P.W. 2 Abhiram Sharma is an employee of District Board who has stated in his examination-in-chief that T.S. no. 120/2000 was dismissed for default on 09.10.2009 and for

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restoration of the said title suit, Misc. case no. 02/2012 was filed. Misc. case no. 02/2012 was dismissed for default and for its restoration Misc. case no. 1/2014 was filed which was allowed. This witness has further stated that on 14.02.2017, date was fixed in Misc. case no. 02/2012, but due to mistake, Pairvikar wrongly noted the date 28.03.2017 and due to this, no pairvi was done on 27.03.2017. In his cross-examination, this witness has stated that the original suit was dismissed thrice and his advocate was suffering from paralysis but he had not left the work. This witness has further stated that register of suits is maintained by him in which date is mentioned.

P.W. 3 Satyendra Yadav is a junior engineer of District Board, Jehanabad. He has also stated in his examination-in-chief that due to overhearing, the advocate clerk noted 28.03.2017 in his diary and when on 28.03.2017, he went to file Haziri, he came to know that Misc. case no. 02/2012 was dismissed for default on 27.03.2017. Thus, from perusal of record, it appears that the ground for restoration of Misc. case no. 02/2012 is that due to overhearing the advocate's clerk wrongly noted the date as 28.03.2017 in his diary in place of 27.03.2017 due to which no pairvi was done on 27.03.2017 due to which Misc. case no. 02/2012 was dismissed for default on 27.03.2017. But, the appellant has neither produced that diary of the advocate clerk in this case nor got the same exhibited to prove that 28.03.2017 was wrongly noted in that diary by the advocate's clerk. From perusal of order sheet of Misc. case no. 02/2012, it appears that vide order dated 07.02.2017, the petitioner (the appellant in this appeal) has been given last chance to take proper step, vide order dated 07.03.2017, the petitioner (the appellant) has been directed to take proper step failing which necessary order shall be passed and thereafter the next date has been fixed on 27.03.2017 on which there was neither any pairvi on behalf of the petitioner (the appellant) nor any one appeared on repeated calls due to which the case was dismissed for default. It further appears from the record that the appellant filed T.S no. 120/2000 which was dismissed for default on 09.10.2009, for restoration of T.S no. 120/2000, the appellant filed Misc. case no. 02/2012 which was also dismissed for default on 11.01.2013 and for restoration of Misc. case no. 02/2012, the appellant filed Misc. case no. 01/2014 which was allowed and Misc. Case no. 02/2012 was restored to its original file. But, again the appellant left pairvi in Misc.

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case no. 02/2012 due to which Misc. case no. 02/2012 was dismissed for default. For restoration of Misc. case no. 02/2012, the appellant filed Misc. case no. 02/2017. Thus, from perusal of the record and after taking into consideration the above noted facts and circumstances of this case, this court finds that the appellant has been protracting litigation for the last 26 years and there is gross negligence and gross carelessness on the part of the appellant and he has not been diligent and careful in pursuing the case right from the beginning and he has got no sufficient cause for restoration of Misc. case no. 02/2012 and the Misc. case no. 02/2017 filed by the appellant for restoration of Misc. case no. 02/2012 is fit to be dismissed. The learned trial court has dismissed Misc. case no. 02/2017 by the impugned order. So, the impugned order is sustainable and it does not require any interference by this court in this appeal.

Hence, it is

ORDERED

that this Misc. appeal is **dismissed** on contest without cost.

Let a copy of this order along with the trial court record be sent to the court concerned for needful.

Pronounced, signed and sealed in the open court on this **24th day of March, 2026.**

(Dictated & Corrected)

(Dictated & Corrected)

(Brajesh Kumar)
Principal District Judge
Jehanabad
24.03.2026

(Brajesh Kumar)
Principal District Judge
Jehanabad
24.03.2026

Date of Judgment	24.03.2026
Date of reserving Judgment	N/A
Uploading date	25.03.2026
Uploaded by	Ritesh Kr.