

**(2012) 06 JH CK 0043**

**Jharkhand High Court**

**Case No:** M.A. No. 398 of 2007

Ranjit Singh Munda

APPELLANT

Vs

Panchami Singh Munda and  
Another

RESPONDENT

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**Date of Decision:** June 15, 2012

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 17, Order 41 Rule 19

**Citation:** (2013) 2 JLR 420

**Hon'ble Judges:** Jaya Roy, J

**Bench:** Single Bench

**Advocate:** B.K. Pandey and S.K. Dutta, for the Appellant; Ayush Aditya, Advocate for the Respondent No. 1 and Mr. R. Mukhopadhyaya S.C.II. for the Respondent No. 2, for the Respondent

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### **Judgement**

Hon'ble Mrs. Justice Jaya Roy

1. Heard the parties.

The appellant has filed the instant appeal against the Judgment dated 28.6.2007 passed in Misc. Case No. 6 of 2005 by Additional Judicial Commissioner No. 1, Khunti rejecting the prayer of the appellant to set aside the order dated 16.7.2005 passed in T.A. No. 124 of 2003.

Case in brief is that the plaintiffs -respondents filed a Partition Suit i.e. P.S. No. 120 of 1986 which has been decreed by the Judgment dated 8.8.03 and decree dated 23.8.03. Against the aforesaid Judgment and decree, the present appellant filed a Title Appeal i.e. T.A. No. 124 of 2003. On 16.7.2005 the aforesaid appeal was fixed for hearing but the said appeal was dismissed Under Order 41 Rule 17 C.P.C. on 9.8.2005 for non-appearance of the appellant's counsel when the case was called out, Against aforesaid order dated 16.7.2005, the appellant filed a Miscellaneous

petition on 9.8.2005 for re-admission/restoration of the appeal under order 41 Rule 19 C.P.C. which was registered as a Misc. Case No. 6 of 2005. Thereafter, after hearing the parties, the said Misc Case was dismissed as stated above.

2. The learned counsel of the appellant, has submitted that the appellant was not negligent. It was only due to the reason that his counsel could not turn up when the Title Appeal No. 124 of 2003 was called out as he was engaged in another Court. It is further submitted that the appellant himself also could not dare to appear in the said Court. It is further contended that the appellant is a poor illiterate tribal.

3. The learned counsel of the respondent has vehemently opposed and submitted that the counsel of the appellant took a number of adjournments in the Title Appeal No. 124 of 2003.

4. Considering the fact and circumstances of the case and considering the materials on record and further more, the Hon"ble Apex Court has held in numbers of cases again and again that party should not suffer for the inaction/deliberate omission or misdemeanour of his lawyer or his agent, in my opinion, for the interest of justice, the aforesaid Title Appeal should be readmitted. Accordingly, I allow the instant appeal subject to payment of cost of Rs. 2,000/- to the counsel appearing for the respondent no. 1 Mr. Ayush Aditya within a period of one month from the date of this order and set aside the Judgment dated 28.6.2007 passed in Misc. Case No. 6 of 2005 and order dated 16.7.2005 passed in T.A. No. 124 of 2003. The counsel for the appellant will file the receipt with regard to the payment of the cost within the said period.

5. The Court below is directed to conclude the hearing of the appeal i.e. T.A. No. 124 of 2003 within a period of six months from the date of receipt of the lower court records. The office is directed to send the entire lower court records to the court below after the filing of the receipt with regard to payment of cost, filed by the counsel appearing for the appellant in the case.

This appeal is disposed with the aforesaid directions.