

(2009) 02 PAT CK 0033
In the Patna High Court
Case No : C.R. No. 194 of 2009

Ambika Prasad Mishra @ Ambika Mishra and Others	APPELLANT
Vs	
Satish Mishra @ Bhawani Chandra Mishra and Others	RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3

Citation : (2009) 3 PLJR 817

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dr. Ravi Ranjan, J.—Heard Mr. Ashutosh Ranjan Pandey, learned counsel for the petitioners. The Defendants-Petitioners are aggrieved by the order, dated 11.12.2008 passed by the First Munsif, Buxar in Title Suit No. 43 of 1988, whereby petition for substituting the names of the heirs and legal representative of the deceased Plaintiffs No. 1 & 2 has been allowed after condoning the delay in filing the application.

2. Learned counsel for the petitioners submits that the suit has already abated under Order XXII, Rule 3 of the CPC as proper steps for bringing on record the heirs and legal representatives of the deceased plaintiffs were not taken within the time. Subsequently, petitions were filed but without any prayer for setting aside the abatement. Thus, the contention is that the court below ought to have rejected the prayer for substitution in the absence of a proper prayer for setting aside the abatement.

3. I do not find any force in the contention raised on behalf of the petitioners as such technical objection should not come in the way of doing justice.

4. The Supreme Court in K. Rudrappa Vs. Shivappa, , while deciding the matter wherein also a petition for substitution was filed belatedly alongwith limitation petition without making prayer for setting aside the abatement, has decided as

under:--

"10. ...In such circumstances, in our opinion, the learned counsel for the appellant is right in submitting that a hyper-technical view ought not to have been taken by the District Court in rejecting the application inter alia observing that no prayer for setting aside abatement of appeal was made and there was also no prayer for condonation of delay. In any case, when separate applications were made, they ought to have been allowed. In our opinion, such technical objections should not come in doing full and complete justice between the parties. In our considered opinion, the High Court ought to have set aside the order passed by the District Court and it ought to have granted the prayer of the appellant for bringing them on record as heirs and legal representatives of deceased Hanumanthappa and by directing the District Court to dispose of the appeal on its own merits. By not doing so, even the High Court has also not acted according to law."

5. I do not find any jurisdictional error or illegality in the impugned order dated 11.12.2008 warranting interference by this Court in its revisional jurisdiction. The Civil Revision application is dismissed.