

(2016) 09 JH CK 0001
In the Jharkhand High Court
Case No : S.A. No. 287 of 2003.

Lallu Mistri and Others - Appellants @HASH Praduman Mistri and Others

Date of Decision : 01-09-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2016) 4 JBCJ 305

Hon'ble Judges : Amitav K. Gupta, J.

Bench : Single Bench

Advocate : Mr. P.K. Deomani, Advocate, for the Appellants; None, for the Respondents

Final Decision : Allowed

Judgement

Mr. Amitav K. Gupta, J. - I.A.No. 666/16 with I.A. No. 665/16 Learned counsel for the appellants is in attendance, however on repeated calls none appeared on behalf of the respondents.

2. The above interlocutory applications have been filed under Section 5 of the Limitation Act and under Order 22, Rules 3 & 9 of the C.P.C respectively for condoning the delay of 2998 days and for substituting the legal heirs/ representatives of deceased appellant no.3, namely Radhe Mistry, who died on 20.08.2007 and for setting aside of the abatement.

3. Learned counsel for the appellants has submitted that the appellants could not file the appropriate application on time, as they had no knowledge that the conducting lawyer, Mr. Debi Prasad, Sr. Advocate, had expired. That the appellant no.8 came to Ranchi in 2016 for getting information regarding the status of the second appeal and he was informed that learned Sr. Advocate, Mr. Debi Prasad has died. Thereafter, he engaged another advocate and on advice he filed the present application. It is submitted that there is no deliberate or intentional laches on the part of the appellants rather the said delay has occurred due to the aforesaid fact. It is submitted that the appellant no.3, namely, Radhe Mistry, died on 20,08.2007 leaving behind the legal heirs/ representatives as mentioned in

para -06 of the supporting affidavit. It is submitted that if the delay is not condoned and abatement if any is not set aside the proposed legal heirs shall suffer irreparable loss and injury.

4. Heard. No doubt the appellant has been lackadaisical, however keeping in view that the appeal has been admitted, thus in the interest of justice the application for condoning the delay is hereby condoned and substitution petition is hereby allowed and the abatement, if any, is hereby set aside, subject to the payment of cost of Rs. 3,000/- to be deposited with the Advocates' Clerk Association by 05.10. 2016.

5. Learned counsel for the appellants shall carry out necessary correction in the cause title by substituting the legal heirs/ representatives of deceased appellant no.3, namely, Radhe Mistry, as mentioned in para-06 of the supporting affidavit.

6. With the aforesaid direction, I.A. Nos. 666/16 and 665/16 stand allowed.

I.A.No. 668/16 with I.A. No. 667/16

7. The above interlocutory applications have been filed under Section 5 of the Limitation Act and under Order 22, Rules 3 & 9 of the C.P.C respectively for condoning the delay of 4278 days and for substituting the legal heirs/ representatives of deceased appellant no.4, namely Raj Kumar Mistry, who died on 17.02.2004 and for setting aside of the abatement.

8. Learned counsel for the appellants has submitted that the appellants could not file the appropriate application on time, as they had no knowledge that the conducting lawyer, Mr. Debi Prasad, Sr. Advocate, had expired. That the appellant no.8 came to Ranchi in 2016 for getting information regarding the status of the second appeal, he was informed that learned Sr. Advocate, Mr. Debi Prasad has died. Thereafter, he engaged another advocate and on advice he filed the present application. It is submitted that there is no deliberate or intentional laches on the part of the appellants rather the said delay has occurred due to the aforesaid fact. It is submitted that the appellant no.4, namely, Raj Kumar Mistry, died on 17.02.2004, leaving behind the legal heirs/ representatives as mentioned in para -06 of the supporting affidavit. It is submitted that if the delay is not condoned and abatement if any is not set aside the proposed legal heirs shall suffer irreparable loss and injury.

9. Heard. No doubt the appellant has been lackadaisical, however keeping in view that the appeal has been admitted, thus in the interest of justice the application for condoning the delay is hereby condoned and substitution petition is hereby allowed and the abatement if any is hereby set aside, subject to the payment of cost of Rs. 3,000/- to be deposited with the Advocates Welfare Fund by 05.10. 2016.

10. Learned counsel for the appellants shall carry out necessary correction in the cause title by substituting the legal heirs/ representatives of deceased appellant no.4, namely Raj Kumar Mistry, as mentioned in para-06 of the supporting

affidavit.

11. With the aforesaid direction, I.A. Nos. 668/16 and 667/16 stand allowed.

I.A.No. 663/16 with I.A. No. 669/16

12. The above interlocutory applications have been filed under Section 5 of the Limitation Act and under Order 22, Rules 3 & 9 of the C.P.C respectively for condoning the delay of 4264 days and for substituting the legal heirs/ representatives of deceased appellant no.11, namely Kameshwar Mistry, who died on 02.03.2004 and for setting aside of the abatement.

13. Learned counsel for the appellants has submitted that the appellants could not file the appropriate application on time, as they had no knowledge that the conducting lawyer, Mr. Debi Prasad, Sr. Advocate, had expired. That the appellant no.8 came to Ranchi in 2016 for getting information regarding the status of the second appeal, he was informed that learned Sr. Advocate, Mr. Debi Prasad has died. Thereafter, he engaged another advocate and on advice he filed the present application. It is submitted that there is no deliberate or intentional laches on the part of the appellants rather the said delay has occurred due to the aforesaid fact. It is submitted that the appellant no.11, namely Kameshwar Mistry, died on 02.03.2004, leaving behind the legal heirs/ representatives as mentioned in para -06 of the supporting affidavit. It is submitted that if the delay is not condoned and abatement if any is not set aside the proposed legal heirs shall suffer irreparable loss and injury.

14. Heard. No doubt the appellant has been lackadaisical, however keeping in view that the appeal has been admitted, thus in the interest of justice the application for condoning the delay is hereby condoned and substitution petition is hereby allowed and the abatement if any is hereby set aside, subject to the payment of cost of Rs. 4,000/- to be deposited with the Member, Secretary, JHALSA, Ranchi by 05.10. 2016.

15. Learned counsel for the appellants shall carry out necessary correction in the cause title by substituting the legal heirs/representatives of deceased appellant no.11, namely Kameshwar Mistry, as mentioned in para-06 of the supporting affidavit.

16. With the aforesaid direction, I.A. Nos. 663/16 and 669/16 stand allowed.

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17. Learned counsel for the appellants has submitted that he shall file the vakalatnama on behalf of the proposed legal heirs of deceased appellant nos. 3, 4 & 11.

18. Heard. The vakalatnama be accepted subject to the payment/deposit of cost as noted above.

19. If the receipt regarding deposit of cost is filed by the appellant, office shall

list this case under the heading for "Hearing" on 28.10.2016.