
(2023) 09 JH CK 0079

In the Jharkhand High Court

Case No : Latter Patent Appeals No. 472 Of 2022

Neelam Singh And Others

APPELLANT

Vs

Dr. Sudha Sinha And Others

RESPONDENT

Date of Decision : 26-09-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 22 Rule 4, Order 22 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2023) 09 JH CK 0079

Hon'ble Judges : Shree Chandrashekhar, J;Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Amit Kumar Das

Judgement

1. No one appears for the appellants.
2. I.A. No. 8855 of 2023 has been filed for recall of the order dated 24 th August 2023 passed in I.A. No. 3507 of 2023.
3. The necessity for filing this interlocutory application seems to be the mistake committed by the appellants in not disclosing complete facts in I.A. No. 3507 of 2023.
4. The appellants have themselves stated in the present interlocutory application as under:

"3. That it is stated that the appellants filed I.A. No. 3507 of 2023 before the Hon'ble Court for substitution of the names of the legal heirs of the deceased namely Shyama Devi who was Respondent No.2 in M.A. No. 123 of 2012 but due to inadvertence and bonafide mistake relevant facts of the case could not be mentioned in the said petition and on the basis of the averments made in the said petition the Hon'ble Court has been pleased to allow the petition by terms of order dated 24.08.2023.
4. That it is stated that the appellants have filed separate Interlocutory

Application in the above appeal stating full facts of the case praying therein for substitution of the names of the heirs and legal representatives of the deceased Respondent No.2 namely Shyama Devi after setting aside abatement and condoning delay in filing substitution petition.

5. That it is respectfully submitted that due to inadvertence and bonafide mistake the relevant facts of the case could not be mentioned in the earlier Interlocutory Application being I.A. No. 3507 of 2023 and on the basis of the statements made in the said petition order has been passed by the Hon'ble Court allowing the petition for substitution.

6. That it is stated that due to inadvertence composite application under Order XXII Rule 4 and 9 C.P.C. read with Section 5 of the Limitation Act, 1963 was filed vide I.A. No. 3507 of 2023 and as such separate Interlocutory Application is being filed afresh."

5. Now I.A. No. 8854 of 2023 has been filed under Section 5 of the Limitation Act.

6. This application for condonation of delay has been filed in view of the fact that the application for substitution was not filed within the period of limitation and, therefore, before the application for substitution can be taken up by this Court, it is necessary to set-aside abatement. For that purpose, in I.A. No. 8854 of 2023, the appellants have shown sufficient cause inasmuch as Misc. Appeal No. 123 of 2012 was dismissed for non-prosecution on 8th January 2020 but in the meantime the respondent No. 2 had passed away. As a matter of fact during pendency of Misc. Appeal No. 123 of 2012, the respondent No. 2 had died on 22nd August 2017.

7. I.A. No. 8856 of 2023 has been filed for substitution of the respondent No. 2 by her legal heirs namely Praveen Kumar, Subin Kumar, Dr. Sudha Sinha and Arunima Rai.

8. Having regard to the bona fide of the appellants in moving these applications, the delay in filing the application for substitution is condoned and consequently abatement is set-aside. Accordingly, I.A. No.8854 of 2023, I.A. No.8855 of 2023 and I.A. No. 8856 of 2023 are allowed.

9. The Registry shall carry out necessary corrections.

10. Mr. Amit Kumar Das, the learned counsel for the respondent No. 1 has brought to our notice the order passed in L.P.A. No. 422 of 2022 which was listed along with the present Letters Patent Appeal on 4th September 2023.

11. Let the order passed in L.P.A. No. 422 of 2022 be kept on record.

12. Post this matter on 29th September 2023.