
(2016) 05 JH CK 0113
In the Jharkhand High Court
Case No : M.A. No. 141 of 2011

New India Assurance Company Ltd.

APPELLANT

Vs

Ganga Ram Pradhan and Others

RESPONDENT

Date of Decision : 12-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4
Limitation Act, 1963 — Section 5

Citation : (2016) 2 AIRJharR 860

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

Bench : Single Bench

Advocate : Nisha Thakur, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

Amitav K. Gupta, J.—I.A. Nos. 3038/16 and 4586/15.

1. The above interlocutory applications have been filed under Section 5 of the Limitation Act for condoning the delay of 540 days and under Order 22, Rule 4 of the CPC, for substitution of the name of legal heir of deceased respondent no.3.

2. Learned counsel for the appellant has submitted the respondent no.3, namely, Sikandar Toppo, who was the owner of the Bus being No. JH-07A-2915 died on 29.10.2012. The information regarding death of Sikandar Toppo was sent by the father of the deceased respondent no.3 along with the letter of Mukhiya which is dated 19.10.2013. It is submitted that the appellant came to know about the death of respondent no.3, when the case was listed on 8.1.2014. The Court had directed to the appellant to take appropriate steps for bringing on record the legal heirs/ representatives of the deceased respondent no.3. That the letter regarding the death of respondent no.3 was handed over to the counsel in the court below by the insurance company, but the name of the legal heirs/ representatives was not available on record neither the court below was informed regarding the legal heirs of the deceased. Thus in the absence of name of legal

heirs, the insurance company decided to file the present substitution petition for substituting the name of the father as the legal heir of the deceased respondent no.3. It is submitted that there is no deliberate or intentional laches on the part of the appellant and the delay has occurred due to the above reason.

3. On the above grounds, it has been submitted that the delay may be condoned and abatement if any be set aside.

4. In view of the reason assigned in the supporting affidavit sufficient cause and reasonable explanation has been given, accordingly, the delay is, hereby, condoned and let the name of deceased respondent no.3 be deleted from the cause title and in his place the name of his father be substituted as a legal heir/representative, as mentioned in para no.4 of I.A. No.4586 of 2015, and abatement, if any, is hereby set aside.

5. Learned counsel for the appellant shall carry out the necessary corrections in the cause title in red ink.

6. In the result I.A. No.3038/16 and I.A. No.4586/15 stand allowed.

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7. Learned counsel for the appellant shall file requisites of notice to be served upon substituted legal heir/representative of deceased respondent no.3 by ordinary process within two weeks.

8. Put up this case on 13.7.2016 under the heading for "Admission".