

(2020) 11 JH CK 0036
In the Jharkhand High Court
Case No : Second Appeal No. 93 Of 2003

Sukh Nath Nagesia & ors

APPELLANT

Vs

Chaiti Nagesia & Ors

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Limitation Act, 1963 — Section 5

Code Of Civil Procedure, 1908 — Order 22 Rule 4, Order 22 Rule 9

Citation : (2020) 11 JH CK 0036

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : S.K. Sharma

Judgement

I.A. No.1967 of 2008.

It appears that, I.A. No.1967 of 2008 has been filed under Order 22 Rule 4 and Rule 9 read with Section 5 of the Indian Limitation Act for substitution of legal heirs of respondent no.4 (Puran Nagesia), who died on 19.02.2006 by setting aside the abatement and condoning the delay of 26 months and substituting his legal heirs and successor, which are as follows:-

(i) Bimala Nagesia, W/o Late Puran Nagesia

(ii) Madan Nagesia

(iii) Mangar Nagesia

(iv) Pairu Nagesia As such, the legal heirs and successor of respondent no.4, may be substituted as respondent no.4(a), 4(b), 4(c) and 4(d). It appears that the instant appeal has already been admitted on 22.01.2007.

Learned counsel for the respondents has opposed and submitted that there is long delay of 26 months in filing such petition, as such, the same may not be allowed.

Considering rival submissions of the parties and looking into the facts and circumstances and considering that the appeal is already admitted, this Court is inclined to allow the application directing the office/Registry to substitute the legal heirs and successor as respondent no.4(a), 4(b), 4(c) and 4(d). I.A. No.1967 of 2008 stands disposed of.

On behalf of substituted legal heirs and successors, Vakalatnama has already been filed on 11.11.2008 by learned counsel, Mr. S. K. Sharma, as such, no notice is required to be issued upon substituted legal heirs. So far service of notice upon respondent No.5 (Deputy Commissioner, Simdega) is concerned, though the Head Clerk of Deputy Commissioner, Simdega has received the notice, but till date no body appears on behalf of respondent no.5.

Under the aforesaid circumstances, counsel for the appellants is directed to serve two copies of memo of appeal along with interlocutory application and other relevant documents upon the office of learned Advocate General, Government of Jharkhand, Ranchi at the earliest for appearance of Deputy Commissioner, Simdega.

So far service of notice upon respondent No.6 (Dhoro Nagesia) is concerned, the appellant is directed to take steps for fresh service of notice upon respondent No.6 under both process i.e. under ordinary process and under registered cover with AD, for which, requisites etc., must be filed within a period of four weeks. List this case after service of notice.