

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19849 of 2010

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Geeta Ram S/O Late Zalim Ram R/O Vill.- Laxmipur, Tappa Patjirwa,
P.O./P.S.- Jogapatti, Distt.- West Champaran

.... Petitioner/s

Versus

Bhannu Mahto S/O Bhagirathi Mahto R/O Vill.- Laxmipur, Tappa Patjirwa,
P.O./P.S.- Jogapatti, Distt.- West Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Kumar Dwivedi

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 07-08-2015 Heard Mr. Dwivedi for the petitioner.

The petitioner is the appellant of T.A. No. 26 of 2008 filed against the judgment and decree of the trial court decreeing the suit of the sole plaintiff (respondent of the appeal). The sale deed made in favour of the petitioner was declared forged and fabricated. The appeal was admitted to hearing. The plaintiff-respondent appeared thereat. During the Pendency of the appeal, the sole plaintiff (respondent of the appeal) died on 02.05.2009 and information in this regard was furnished on 16.09.2009. On 03.05.2010 an application was filed for substitution of the plaintiff-respondent of the appeal under Oder 22 Rule 4 of the CPC. The same was not supported by an application for

condonation of delay and also for setting aside the abatement. The trial court finding that there was no prayer for condonation of delay rejected the said application seeking substitution of the plaintiff-respondent. Aggrieved thereby, the present writ application has been filed.

Mr. Dwivedi has fairly stated that by mistake no application was filed either for condonation of delay and/or for setting aside the abatement, if any. If that be the case, then the court below, in my view, did not commit any error in rejecting the application against which the present writ application has been filed. Mr. Dwivedi has, however, contended with reference to diverse judgments of this Court as well as the Hon'ble Apex Court that the condonation of delay should not be considered pedantically by the Court. If any such request is made the court should always lean in favour of adjudicating the lis on merit for which the forum is created.

The Court in these factual backgrounds is not inclined to interfere with the order. Before parting with the records, this Court records the stand taken by Mr. Dwivedi that an appropriate application for substitution along with an application for condonation of delay and for

setting aside the abatement, if any, shall be filed for consideration by the court afresh in accordance with law.

The application is disposed of.

(Kishore Kumar Mandal, J)

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