

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3031 of 2016

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Ram Darash Rai & Ors

.... Petitioner/s

Versus

The State of Bihar & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shree Kant Pandey

For the Respondent/s : Mr. Ga13- Smt. Namrata Mishra

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 14-07-2016 Heard the learned counsel, Mr. Shree Kant Pandey for the petitioners and learned counsel, Mr. Chhotelal Mishra, A.C. to G.A.13 for the State-respondent.

It appears that title appeal was filed by the petitioners being Title Appeal No.58 of 2003. Appellant No.8 died on 01.07.2007 and the application was filed by the legal representatives of the deceased appellant No.8 for being added as party in place of the deceased after 13 months. The Court below has rejected the said application after 7 years on the ground that there is delay and it is against the legal provisions.

It is settled principles of law as has been held by the Supreme Court in the case of **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors., 2014(1) PLJR 290(SC)** that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an

application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice vide paragraph 15. In addition to the above, other guidelines have been mentioned in the said paragraph.

In the present case, admittedly, the application for being added as party has been filed by the legal representatives. Therefore, the question is whether the legal representatives of the deceased appellant No.8 were necessary or not should have been decided by the Court but only on the ground of delay, the application was rejected and then the Court below has held that the whole appeal is incompetent.

In my opinion, therefore, the Court below has approached the case in the manner not permitted by law and thereby occasioned failure of justice. Mere levelling of the application cannot be made a ground for rejection of the application. Further, other appellants were also there. Therefore, the other appellants can very well maintain the appeal but the Court below has passed the order abating the appeal as a whole.

In view of the above facts and circumstances of the case, the impugned order is set aside and the appellate court is directed to decide the title appeal on merit after substituting/adding the legal representatives of the deceased appellant No.8. The

application filed by the petitioners before the Court below is thus, allowed.

In the result, this writ application stands allowed.

(Mungeshwar Sahoo, J)

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