

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.903 of 2016**

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Seukhi Sahani

.... Appellant/s

Versus

Raja Ram Rai & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 25-10-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated 21.07.2016 passed by learned Additional District Judge-VII, Motihari (East Champaran) in Title Appeal No.55 of 1999 whereby the limitation application was allowed and the delay in filing the substitution application has been allowed and the legal representatives of the deceased respondent nos.3, 4, 5 and 6 have been substituted.

The learned counsel for the petitioner submitted that in the substitution application the date of death of respondents has not been mentioned by the plaintiffs and there is no explanation regarding delay in filing the substitution application. According to the learned counsel, the substitution application has been filed much after 90 days. The learned counsel relied upon the decision of the Supreme Court, **A.I.R. 2009 Supreme Court 2907**.

From perusal of the judgment of the Hon'ble Supreme

Court, it appears that in that case the neighbours of the plaintiffs had died and, therefore, explanation given by the plaintiffs that they had no knowledge about the death was found to be incorrect statement and the Hon'ble Supreme Court held that if for the purpose of getting the delay condoned incorrect statement has been made that itself is a ground for rejection of the limitation application.

In the present case, at our hand, rejoinder to the substitution application has been filed by the present petitioner. In his application also the present petitioner did not disclose the date of death of any of the defendants. His case is that the respondents in the appeal died long ago. Admittedly an application under Section 5 of the Limitation Act has been filed by the appellant.

The Hon'ble Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, 2014 (1) P.L.J.R. 290 (SC)** at paragraph 15 has given some guidelines for consideration of the limitation application wherein it has been held 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.

In view of the above settled propositions of law, in my opinion, the decision relied upon by the learned counsel for the petitioner is not applicable in the present case. The learned court below considering the explanation has condoned the delay and, therefore, it is subjective satisfaction of the Court, who considered the limitation application. As such, it calls for no interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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