

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.79 of 2016**

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Binod Kumar

.... Appellant/s

Versus

Moti Sah & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Madhusudan Kumar

For the Respondent/s : Mr.

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

2 03-08-2016

The learned counsel, Mr. Madhusudan Kumar for the petitioner submitted that the learned Sub Judge VII, Saran at Chapra wrongly allowed the substitution application after condoning the delay and setting aside abatement and the Title Suit No.567 of 2005 was restored by order dated 12.08.2015.

Perused the order. It appears that the suit was abated for non-filing of substitution application of the deceased defendant No.1. The present petitioner herein is the intervener in the suit. The legal representatives of the deceased defendant No.1, who have been substituted, are not aggrieved. The Court below on the basis of the explanation given in the limitation application recorded finding that the plaintiff has no knowledge about the death and, therefore, condoned the delay and accordingly, the delay was condoned and substitution application was allowed.

In such circumstances, in my opinion, it cannot be said

that the order passed by the Court below is not in the manner permitted by law nor it can be said that it occasioned failure of justice. Merely the substitution application has been allowed after setting aside abatement and condoning the delay, therefore, in my opinion, it is not a case for interference in exercise of supervisory jurisdiction.

Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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