

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.6 of 2015

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Rajeev Kumar & Anr

.... Appellant/s

Versus

Bindeshwari Prasad Singh & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lalit Narayan Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 09-08-2016

Heard learned Counsel for the appellants.

The Interlocutory Application (I.A. No. 6078 of 2016) has been filed praying for expunging the name of deceased appellant No. 2 on the ground that the heir of appellant No. 2 is already on record of this appeal as appellant No. 1. Further prayer has been made to substitute the heirs and legal representatives of the deceased respondent No. 1 Bindeshwari Prasad Singh after condonation of delay and setting aside abatement.

In view of the averments made in the said Interlocutory Application the prayer for expunging the name of deceased appellant No. 2 is allowed and his name is accordingly expunged from the memo of appeal.

It further appears that the respondent No. 1 Bindeshwari Prasad Singh has died on 15.11.2015 and the present application has been filed on 29.7.2016 with the prayer for condonation of delay and setting aside abatement. It does not transpire from the Interlocutory Application that any explanation whatsoever has been made in the Interlocutory Application for condonation of delay and

setting aside abatement. The learned Counsel for the appellant has also fairly accepted that there is no explanation or sufficient cause for not taking steps for substitution within time.

In view of the aforesaid facts and circumstances, this Court finds it difficult to condone the delay and set aside abatement as against deceased respondent No. 1. The prayer for substitution and condition of delay after setting aside abatement is accordingly rejected. The Interlocutory Application (I.A. No. 6078 of 2016) is dismissed so far as it relates to respondent No. 1.

Learned Counsel for the appellants has submitted that this appeal cannot proceed with respondent no. 2 alone on record.

In that view of the matter, this appeal is dismissed as incompetent.

(V. Nath, J.)

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