

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10876 of 2014

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1. Fatah Alam S/o Rizwan
2. Md. Sohail S/o Late Ghufraan
3. Md. Azam S/o Mir Ismail
4. Md. Zafar S/o Late Ghufraan All are R/o Village - Saidpur Aima Pargana Ballia,
P.S. and Anchal - Matihani, District -Begusarai

.... Petitioner/s

Versus

1. Md. An Alam
2. Md. Sikandar both S/o Late Shamsul
3. Sajida Khatun wife of Late Asghar
4. Shabino Khatun D/o Late Md. Asghar
5. Babiya Khatun D/o Late Md. Asghar
6. Parween Khatun D/o Late Md. Asghar
7. Ashmun Khatun D/o Late Md. Asghar All are R/o Village - Saidpur Alma, P.O.
Saidpur, P.S. Matihari, District - Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.M. Shabbir Alam, Adv
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-07-2016

Heard learned counsel for the petitioners.

2. The petitioners are the respondents in the appeal in the court below and are aggrieved by the order by which the learned court below has allowed the prayer of the appellants for substitution of the heirs and legal representatives of some of the appellants and respondents as prayed in their petition dated 17.02.2012.



3. Learned counsel appearing for the petitioners has submitted that the learned court below has wrongly allowed the prayer on behalf of the respondents (appellants in the court below) when there was no sufficient cause established by them for condonation of delay and setting aside the abatement before the prayer for substitution is to be allowed. It has been canvassed by the learned counsel that the law envisaged under Order 22 Rule 3 and 4 of the C.P.C requires the proof of sufficient cause and even in view of the provision of Order 22 Rule 4(4) burden of proof is always upon the party who seeks to get the limitation condoned and abatement set aside to prove that he was prevented by sufficient cause in not making the prayer for substitution earlier. Referring to the averments made in the petition and rejoinder filed by the petitioners thereto it has also been contended by the learned counsel that a valuable right has accrued to the petitioners as the appeal has abated for want of substitution of some of the deceased appellants and respondents and that right cannot be frittered away lightly. The learned counsel has relied upon a decision of the Apex court in the case of ***Union of India vs Ram Charan AIR 1964 S.C. 215*** in support of his contention that mere ignorance of the fact of death or even otherwise would not have absolved the respondents from getting the limitation condoned and abatement set aside.



4. After considering the submissions and perusal of the impugned order it is manifest that the appeal in the court below has been preferred by the respondents (appellants in the court below) against the judgment and decree passed in a suit filed for declaration of title and possession over the suit land. It also transpires from the impugned order that earlier the first appeal was preferred before this Court which was subsequently transferred to the court below in view of the pecuniary jurisdiction. The petitioners have filed their rejoinder to the petition for substitution filed by the appellants in the court below and they have been heard before passing the impugned order. The learned court below after considering the facts and circumstance of the case has recorded the finding that the appellants were prevented by sufficient cause in not filing the substitution petition within time. Law is well settled that proof of sufficient cause is not so strict in such cases as also observed by their Lordships in the case of **Ram Charan (supra)**. It has also been further observed that such question of abatement of the suit does not relate to the merits of the dispute between the parties and if the abatement is set aside the only consequence which shall follow would be the determination of the dispute on merits whereas if the abatement is not set aside the appellant is deprived of pursuing his claim.

5. After considering the submissions and the facts and circumstances of the case, this court is of the opinion that the learned court below has rightly set aside the abatement and allowed the substitution petition in accordance with law. This Court therefore, is not inclined to invoke its jurisdiction under Article 227 of the constitution of India.

6. The application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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