

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.812 of 2016**

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Paro Devi

.... Petitioner/s

Versus

Sarjug Mahton & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ratnakar Ambastha

For the Respondent/s : Mr.

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

4 16-02-2017 Heard the learned counsel for the petitioner. Although Notice has already been validly served on the respondent No.1, nobody appeared.

It appears that title appeal was filed by the present petitioner being M.T.A. No.49 of 2008 against the judgment and decree passed by the trial court in title suit. The said M.T.A. No.49 of 2008 was dismissed for default. Thereafter, for readmission of that M.T.A. No.49 of 2008, Misc. Case No.1 of 2013 was filed by the present petitioner under Order 41 Rule 19 C.P.C. During the pendency of the said miscellaneous case, one opposite party of the miscellaneous case died and therefore, substitution application was filed. Since the application was barred by law of limitation, separate limitation application was also filed. Since the petitioner has not made all the respondents as party in the miscellaneous case, an amendment application was filed by the petitioner praying



for adding the names of the defendants and sought permission to change the cause title of the miscellaneous case. The court below by the impugned order has rejected all the applications i.e. substitution application, limitation application and the amendment application.

It appears that two other applications were filed by the petitioner, one application was filed for deleting the name of one of the opposite parties on the ground that he has died. This application was also rejected. It further appears that another application was filed by the present petitioner praying for setting aside the report of the process server that Shibu Choudhary died because in fact, Shibu Choudhary is still alive. The court below by the impugned order has also rejected these two applications. In other words, the lower appellate court has rejected all these five applications which are only formal applications.

It may be mentioned here that the application for substitution was filed in the miscellaneous case. In strict sense order 22 Rule 4 C.P.C. is not applicable. In such circumstances, Article 147 will apply. Moreover, separate limitation application was filed, therefore, the court below should have considered the application liberally.

So far the amendment application is concerned also,



since the petitioner was not praying for amendment in the fact and he prayed for addition of some of the respondents whose names were not added in the miscellaneous case by mistake, all these prayers made by the petitioners are only formal prayers. The court below approached the case in hyper technical manner and has wrongly rejected all these applications and thereby shut the door of justice on technical grounds. It is settled principles of law that technicalities should not come in the way of administration of justice.

The Hon'ble Supreme Court in the case of **Esha Bhattacharjee v. Raghunathpur Nafar Academy, 2014(1) PLJR 290 (SC)** has held that there should 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 my opinion, therefore, the learned court below has wrongly rejected the limitation application also.

In the result, this civil miscellaneous application is allowed. The impugned order is set aside and all the five applications filed by the petitioners are hereby allowed.

(Mungeshwar Sahoo, J)

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