

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1199 of 2013  
Arising out of  
Civil Writ Jurisdiction Case No. 2614 of 2006**

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1. Manoj Kumar Son Of Late Surya Narayan Prasad S/O Ramdeo Prasad Resident Of Mohalla Pethia Gachhi, P.O. & P.S. Samastipur, Distt. Samastipur  
2. Raj Kumar Son Of Late Surya Narayan Prasad S/O Ramdeo Prasad Resident Of Mohalla Pethia Gachhi, P.O. & P.S. Samastipur, Distt. Samastipur  
3. Sanjay Kumar Son Of Late Surya Narayan Prasad S/O Ramdeo Prasad Resident Of Mohalla Pethia Gachhi, P.O. & P.S. Samastipur, Distt. Samastipur  
..... Petitioners / Appellants

Versus

1. The State Of Bihar through Chief Secretary, Bihar, Patna  
2. The Secretary Deptt. Of Lanr Reforms, Govt. Of Bihar, Patna  
3. The Collector, Samastipur At Samastipur  
4. The Additional Collector, Samastipur  
5. The Circle Officer, Samastipur  
6. The Executive Officer, Samastipur Municipality, Samastipur  
7. The Circle Inspector Samastipur Circle, Samastipur  
..... Respondents 1<sup>st</sup> party  
8. Smt. Chandrawati Devi Wife Of Late Satya Deo Prasad Resident Of Mohalla - Gola Road, Ward No. - 3 (Old), P.O. & P.S. - Samastipur, District – Samastipur  
..... Respondent 2<sup>nd</sup> Party  
9. Ravindra Prasad Barnawal Son Of Radhe Shyam Lal Resident Of Mohalla - Magardhahi, Station Road, Ward No. -6 (Old), P.C. & P.S. Samastipur, Distt. Samastipur  
10. Smt. Usha Devi Wife Of Sri Ravindra Prasad Barnawal Resident Of Mohalla - Magardhahi, Station Road, Ward No. -6 (Old), P.C. & P.S. Samastipur, Distt. Samastipur  
11. Abhishek Kumar @ Sonu (Minor) Represented Through His Father Sri Tej Narayan Choudhary Resident Of Village Nagar Basti, P.O. Begampur, P.S Warisnagar, District - Samastipur  
12. Prince Kumar Saxena (Minor) Represented Through His Father Sri Tej Narayan Choudhary Resident Of Village Nagar Basti, P.O. Begampur, P.S Warisnagar, District - Samastipur  
13. Ashish Kumar (Minor) Represented Through His Father Sri Deep Narayan Choudhary Resident Of Village Nagar Basti, P.O. Begampur, P.S Warisnagar, District - Samastipur  
..... Respondents 3<sup>rd</sup> Party.

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**Appearance:**

For the Appellant/s : Mr. Suresh Prasad Singh No. 1 and  
Mr. Ashok Kumar Singh, Advocates.  
For the Respondent/s : Mr. Anshuman Singh, AC to AG.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI  
and  
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT



**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 21-08-2017**

Heard learned counsel for the appellants and learned counsel for the State.

2. Refusal by the learned Single Judge to proceed with the Writ Application since the writ had abated, due to non-substitution of the sole petitioner for more than four years and five months, is the cause of action for the appellants to file the present Letters Patent Appeal against the order dated 27.06.2013.

3. In brief, the Writ Application in question was filed in the year 2006. When it was taken up for final disposal on 27.06.2013, an Interlocutory Application No. 1604/2013 was filed in the Writ Application seeking to bring on record the legal heirs of the sole petitioner, who had died more than four years ago during the pendency of the writ. The date of death is 21.09.2008.

4. Obviously, there was a serious omission and lapse in not bringing the legal heirs within a reasonable time. Once the death took place, a right had accrued on behalf of the contesting respondents. A serious resistance was put up before the learned Single Judge against the effort on the part of the present appellants to bring themselves on record as legal heirs.

5. The learned Single Judge took note of principles laid



down by one of the earliest leading cases on the issue, namely, the case of **Puran Singh Vs. State of Punjab**, (1996) 2 SCC 205, and held that even though rules of limitation do not apply in proceedings under Article 226 of the Constitution of India strictly, however, there has to be some kind of reasonableness attached with the proceedings in public interest. In the present case, since there was a delay of four years and five months and the reason indicated in the substitution petition is that the Pairvikar had been handed over the death certificate and materials to be tendered to the counsel for its filing and since he failed, these appellants cannot be punished.

6. The Pairvikar has not filed any kind of affidavit in this case. Who is this Pairvikar? He is an illusive or a non-existent person, who is not willing to own up his failure, if there was one. He cannot be used as an excuse for condonation and substitution in a Writ Application where the sole petitioner was dead more than four years ago.

7. Learned counsel for the appellants tries to rely upon a decision rendered in the case of the **State of Bihar & Ors. Vs. Ramesh Prasad and Anr.**, reported in 2015 (1) PLJR 645, that *stricto sensu* the Code of Civil Procedure as such do not apply nor do the provisions of limitation.

8. As a proposition there cannot be any quarrel but keeping



in view that there has to be some rationality involved in allowing these kind of applications where the *bona fide* itself and the foundation thereof is missing, there has to be some kind of objective consideration whether such acts can be condoned and dead issues like this can be continued at the convenience of a litigant merely because the Courts take a liberal view while entertaining applications under Article 226 of the Constitution of India. The rules of prudence do apply and the basic principles of law also do apply to proceeding under Article 226 of the Constitution of India.

9. We are not satisfied in the given facts and the ground indicated for non-substitution in the pending Writ Application. Obviously, the appellants were not serious about proceeding with the matter for asserting their rights by being vigilant enough. They cannot escape the responsibility by putting the blame on a Parvikar.

10. Appeal has no merit. It is dismissed.

**(Ajay Kumar Tripathi, J)**

**(Rajeev Ranjan Prasad, J)**

Dilip, AR

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