

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1407 of 2016

In
Miscellaneous Appeal No.518 of 2005

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Rama Nand Jha & Anr

... .. Petitioner/s

Versus

Dharamsheela Devi & Ors

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidya Nath Thakur
For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL ORDER

10 28-06-2018 This MJC petition has been filed for re-admission of Miscellaneous Appeal no. 518 of 2005 to its original file with the case that on 24.08.2009, two weeks time was allowed to the appellants to take steps for substitution of deceased-respondent no. 10 subject to limitation if any and the appeal was listed on 11.09.2009, but as the appellants did not turn up, one week time was allowed to comply the order dated 24.08.2009 peremptory. But as the aforesaid order dated 24.08.2009 was not complied within the stipulated period, the appeal stood dismissed. However, the appellants filed substitution petition on 10.11.2009 with the prayer to set aside the abatement of appeal. The appellants again filed I.A. no. 47 of 2015 on 5.01.2015 for substitution of legal representative of deceased-respondent no. 9, who died on 03.06.2014 under *bonafide* impression that the



appeal was pending by that time. On 9.06.2015, when the appellants came to Patna and met his learned counsel to ascertain the current status of the aforesaid appeal, he went through the website and then learnt about the dismissal of appeal in default for non-compliance of the peremptory order dated 11.09.2009. The appellants have not committed any deliberate and intentional laches in non-compliance of the aforesaid order of this Court. They had also no knowledge of dismissal of the aforesaid appeal prior to 09.06.2015. The appellants have also filed the interlocutory application no. 3593 of 2018 for condoning the delay of about 6 years, 8 months 16 days in filing the aforesaid restoration petition.

Notice of the aforesaid case was served upon the opposite parties, but none had put appearance in the case despite service of notice and filed rejoinder.

It is well settled law that the justice should be done after hearing the parties and injustice should not be done merely on technicality by shutting down the opportunity of hearing to the parties.

Hence, considering the facts and circumstances and in the interest of justice, I find sufficient grounds in the said application for condoning the delay in filing the aforesaid



M.J.C. case and aforesaid M.J.C. petition. Hence, condoning the aforesaid delay, the aforesaid Miscellaneous Appeal no. 518 of 2005 is re-admitted to its original file. Accordingly, the aforesaid interlocutory application and this M.J.C. petition are allowed.

(Prakash Chandra Jaiswal, J)

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