

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17416 of 2014

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Dilip Kumar Agrawal S/o Masudi Lal Agrawal Resident of Amla Tola, Katihar,
P.S. and District Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Law Secretary, Patna.
2. Yamuna Prasad Singh S/o Lal Ekbal Singh
3. Smt. Shail Kumari Devi W/o Shri Jamuna pd. Singh
4. Nisha Singh Widow of Late Pramod Kr. Singh No. 2 to 4 are Residents of Mohalla Amla Tola, District- Katihar.
5. Sheru Kedia S/o Jagan Lal Kedia
6. Deepak Kr. Kedia S/o Sheru Kedia
7. Rupak Kr. Kedia S/o Sheru Kedia No. 5 to 7 Residents of Arches Gallery (India Complex) State Bank Gali, Amla Tola, Katihar, P.S. and District Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar, Advocate

For the Respondent/s : Mr. MD. N. HODA KHAN, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 09-08-2018

The petitioner before this Court is defendant no.4 in Title Eviction Suit No.02 of 2004. He has filed this application for quashing the order dated 26.11.2013 passed by Munsif, Katihar whereby and whereunder the plaintiffs were exempted from substituting the legal heir of defendant no.2.

2. Heard learned counsel for the petitioner as well as learned counsel for the respondents. A counter affidavit has been filed on behalf of the respondent nos.2 to 4 which is kept on record.

3. It appears that during the pendency of the suit, the defendant no.2 Deepak Kumar Kedia died. The plaintiffs did not take



any step for his substitution and by filing petition dated 30.08.2013 prayed to exempt him substituting the heirs of deceased. The court below after hearing both sides allowed the petition observing that the said Deepak Kumar Kedia who was one of the partners of the firm did not appear in spite of service of notice. The said defendant did not file any written statement and so the case was posted for ex-parte hearing. The provision of substitution is provided in Order 22 Rule 4 of the CPC. According to Order Rule 22 Rule 4 there is a provision to exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing.

4. In the case in hand, I find that the defendant no.2 neither appeared nor filed any written statement and the suit proceeded ex-parte against him. In such circumstance, the court below has rightly exempted the plaintiffs from substituting the deceased defendant.

5. In view of above, I do not find any merit in this application and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
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