

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.120 of 2015

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Nagendra Singh Son of Late Deosharan Choudhary, Resident of Village - Barkagaori Nokha, Post+P.S.- Nokha, District - Rohtas, Presently posted at Rohtas Khadi Gramodhyog Sangh Bikri Kendra, Cinema Road, Dehri-on-Sone, P.S.- Dehri-on-Sone, District - Rohtas in the capacity of Manager of the Centre.

... .. Appellant/s

Versus

1. Shyam Das Saraogi, Son of Mahabir Prasad Saraogi.
2. Pradeep Kumar Saraogi. Son of Mahabir Prasad Saraogi, (Both are legal heirs of Mahabir Prasad Saraogi). All Resident of Old G.T. Road, Dehri-on-Sone, P.S.- Dehri-on-Sone, District - Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar, Adv.
For the Respondent/s : Mr. R.K. Chandram, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 08-07-2019

Head the parties.

2. This miscellaneous appeal has been filed against order dated 19.02.2015 passed by learned Additional District & Sessions Judge IX, Rohtas at Sasaram in Title Appeal No. 26 of 1984 rejecting the petition dated 13.01.2015 for substitution of sole respondent alongwith limitation petition for condoning the delay in filing substitution petition.

3. Briefly, stated the facts of the case is that respondent filed Title Suit No. 241 of 1982 against defendant/appellant for eviction of appellant from the premises as detailed in Schedule-A of plaint and also for realization of arrears of rent as detailed



in Schedule B.

4. Premises was given on rent to appellant for five years from 01.06.1977 to 30.06.1982 for Rs. 250/- per months and for default in payment for two consecutive months the appellant filed suit for eviction on the ground of default as well as personal necessity.

5. Suit was decreed in favour of plaintiff by judgment and order dated 29.05.1984 against which the appellant filed Title Appeal No. 26 of 1984, however, during pendency of title appeal the sole plaintiff/respondent Mahabir Prasad Saraogi died, however, as the appellant of title appeal had no knowledge about death of plaintiff, as such, he could not file substitution petition within time.

6. It has been submitted that appellants are government undertaking and its authorities and the death of plaintiff could not be known and after receiving the information they ascertained the name of legal heirs of deceased plaintiff and filed substitution petition on 13.01.2015 alongwith an application for condonation of delay in filing substitution petition which has been rejected by the impugned order dated 13.01.2015.

7. After hearing the parties and considering the



submissions made by counsel for the appellant and the reasons for delay in filing the substitution petition, this Court is satisfied that appellant were prevented for sufficient reasons for not filing the substitution petition within the time and the delay in filing has been satisfactory explained, as such, delay in filing substitution petition is condoned under Section 5 of the Limitation Act. Substitution petition dated 13.01.2015 for expunging the name of sole respondent is allowed. The name of sole respondent is expunged from the memo of appeal and in his place the name of his legal heirs and representatives as mentioned in substitution petition be substituted.

8. The appellate court is directed to decide the appeal filed on behalf of appellant within six months from the date of receipt/production of copy of order passed by this Court.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.07.2019
Transmission Date	NA

