

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.624 of 2003

Touli Das & Another

....

Appellants

Mr.G.C. Mohapatra, Advocate

-versus-

Suka Das & Others

....

Respondents

Mr. P.K. Parida, Advocate

CORAM:

MR. JUSTICE D.DASH

ORDER

01.08.2022

R.S.A. No.624 of 2003

&

Order No.

Misc. Case Nos.358,360 & 359 of 2022

24. 1. This matter is taken up through hybrid arrangement (virtual/physical mode).
2. These three applications under Order 22 Rule 3 and 4; Order 22 Rule 9(2) read with Order 22 Rule 11 of the Code of Civil Procedure (in short called as 'the Code') and under section 5 of the Limitation Act have been filed by the Appellants with the composite prayers for substitution of the legal representatives of Appellant No.2, Respondent Nos.1,2 and 3, who have died during pendency of this Appeal by setting aside the abatement and condoning the delay in filing the said Applications. The following parties have died on the dates as so indicated.
- (i) Appellant No.2 – died on 05.08.2014,
 - (ii) Respondent No.1 – died on 21.09.2013,
 - (iii) Respondent No.2 – died on 02.07.2010,
 - (iv) Respondent No.3 – died on 16.07.2009
- and
- (v) Respondent No.5 – died on 23.09.2021

3. It is said that although the Respondent No.4 has also died; in the presence of the Respondents already on record, no other legal representative is there to be substituted as against him.

4. Heard learned counsel for the parties.

5 Keeping in view the submission made, I have carefully gone through the averments taken in the Applications.

6. In the entire Application for setting aside the abatement filed under Order 22 Rule 9(2) read with Rule 11 of the Code; nothing has been stated as to for what reason, steps could not be taken for substitution of the deceased parties within the time prescribed, i.e., within ninety days of the death of the respective parties. It is merely stated that the delay in filing the substitution Application is not willful or deliberate, which makes absolutely no sense. The position remains the same in so far as the Application under Section 5 of the Limitation Act is concerned wherein, the Appellants have not stated as to the sufficient cause coming to stand on the way of filing the Applications for setting aside the abatement within one hundred fifty days from the death of the respective parties. It is simply stated therein that during the Pandemic situation, it was not possible to contact the conducting lawyer for taking appropriate step. In the present case, the Respondent No.1 and Respondent No.5 have died on 21.09.2013 and 23.09.2021 respectively whereas the Appellant No.2 has died on 05.08.2014. But other Respondent Nos.2 and 3 have died way back in the year 2009 and 2010. Here long before the time when Pandemic situation set in, the period for substitution and setting aside abatement of the legal representatives of Appellant No.2 as well as the Respondent Nos.1,2 and 3 were all over. Therefore, to say that the Pandemic situation stood on the way of the Appellants to take appropriate steps in the above matters as the

Appellant No.1 could not contact his Lawyer and do the needful is nothing but dire falsehood. For such long delay in filing the Applications for substitution, setting aside the abatement and condonation of delay, practically no such reason has been assigned and the explanation as stated appears to be not at all plausible.

7. In that view of the matter, I am not inclined to accept the prayers as advanced in the Applications to allow substitution of the Appellant No.2 and Respondent Nos.1 to 3 and 5 by setting aside abatement and condoning such long period of delay.

8. The Applications are accordingly dismissed.

(D. Dash)
Judge

ORDER

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- 25.
1. Consequent upon the order passed in the I.As., the Appeal stands dismissed as having abated against Appellant No.2, Respondent Nos.1,2 and 3.
 2. Keeping in view the nature of the decree under challenge which is joint and indivisible; this Appeal thus cannot proceed further against rest of the parties for its disposal on merit. The Appeal is thus held to have abated as a whole. Accordingly, the Appeal stands dismissed in entirety. No order as to cost.

(D. Dash)
Judge