

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.17 of 1993

JAINATH SINGH

... .. Appellant/s

Versus

KARPALO DEVI and ORS

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Nawal Kishore Kashyap, Advocate Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Thakur Brajesh Singh, Advocate Mr. Ajay Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

31 05-04-2024 **I.A. no.5 of 2024, I.A. no.6 of 2024 and I.A. no.7 of 2024**

1. I.A. no.5 of 2024 has been filed under Order XXII Rule 3, 9 and 11 of the Code of Civil Procedure for expunging the name of the sole appellant Jainath Singh on account of his death on 3.5.2021, condoning the delay in filing of the substitution petition, setting aside abatement and substituting his legal heirs, details of whom has been given in paragraph no.1 of I.A. no.5 of 2024.

2. I.A. no.6 of 2024 has been filed for condoning the delay in filing of the substitution petition and I.A. no.7 of 2024 for setting aside the abatement.

3. Learned counsel for the appellant submits that the sole appellant namely Jainath Singh died on 3.5.2021 leaving behind his wife, five sons and two daughters, details of whom has been given in the interlocutory application. It is submitted



that the Corona period started from 2020 and continued till 2022 and for this reason there was complete lockdown all over the country. It was on the Second Appeal being listed on 19.12.2023 under the heading for hearing that the counsel appearing for the respondents informed this Court that the sole appellant had died long ago and substitution petition had not been filed. Accordingly this Court granted four weeks time to the counsel for the appellant to verify the matter and for filing of the substitution petition. It was thereafter that the counsel for the appellant informed his client and immediately thereafter the substitution petition was filed. It is submitted that legal heirs of the sole appellant were not aware that the substitution petition was to be filed within 90 days. For the ends of justice, the delay in filing of the substitution petition be condoned, the abatement be set aside and the substitution petition be allowed.

4. The application is opposed by learned counsel appearing for the respondents.

5. Having heard learned counsel for the parties and having perused the contents of the three applications, it transpires that the sole appellant died on 3.5.2021. The last date for filing of the substitution petition was 1.8.2021, however, the same was filed on 24.1.2024 ie after a delay of 2 years 8 months



21 days.

6. With respect to the explanation furnished in the application for condonation of delay that the country being under complete lockdown because of Corona from the year 2020 to 2022 is concerned, it may be stated here that the Hon'ble Supreme Court taking into consideration the Covid-19 pandemic, in the case of Cognizance for Extension of Limitation in Re. [(2021) 5 SCC 452] has observed that in computing the period of limitation for any suit, appeal, application or proceedings, the period from 15.3.2020 to 14.3.2021 shall stand excluded.

7. So far as the facts of the instant case is concerned, the sole appellant died on 3.5.2021 which in any case is much after the period excluded by the Hon'ble Supreme Court because of the Covid-19 pandemic. As such, the submission made by learned counsel for the appellant of the delay being caused because of the Covid-19 pandemic is of no assistance to the appellant in the instant case.

8. Learned counsel for the appellant in support of his submission further relied on the judgment of the Hon'ble Supreme Court in the case of Amba Bai vs. Gopal (AIR 2001 SC 2003) and more particularly paragraph no.5 thereof. It may



be stated here that so far as paragraph no.5 is concerned, it only reproduces Order XXII Rule 9 of the Code of Civil Procedure. The said case related to doctrine of merger and in the opinion of this Court, is of no assistance to the appellant of the instant case.

9. With respect to the submission made by learned counsel for the appellant that the heirs of the appellant had no knowledge that a substitution petition is required to be filed within a period of 90 days, the Court finds no substance in the same and the submission is only mentioned to be rejected.

10. In view of the facts and circumstances stated hereinabove, the Court finds no merit in any of the submissions. The heirs of the appellant have not made out a case for condonation of delay in filing of the substitution petition. The application for condonation of delay is rejected. Consequently, the application filed for substitution of the sole appellant also stands rejected.

11. I.A. no.5 of 2024, I.A. no.6 of 2024 and I.A. no.7 of 2024, all stand rejected.

S.A. no.17 of 1993

12. The appeal is dismissed as having abated.

(Partha Sarthy, J)

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