

Bhudeo Choudhary Vs Mukta Choudhary

Court: Jharkhand High Court

Date of Decision: Jan. 21, 2025

Acts Referred: Code of Civil Procedure, 1908 – Order 22 Rule 3, Order 22 Rule 4, Order 22 Rule 9

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Bhaiya V. Kumar

Final Decision: Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Bhaiya V. Kumar, the learned counsel for the petitioners.

2. This petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 20.08.2024 passed by learned Additional

Civil Judge, Jr. Division VII, Hazaribagh whereby the petition for substitution of Defendant nos.7 and 2(d) has been allowed.

3. Learned counsel for the petitioners submits that belatedly the said petition of substitution was filed and the same was also abated and in absence of

any prayer of setting aside the abatement the learned court allowed the substitution which is illegal which may kindly be dismissed.

4. The Court has perused the impugned order. The learned counsel for the petitioners has annexed a petition filed for substitution along with the

limitation petition as well as the rejoinder. Thus, it is admitted position that the petitions have been filed separately and learned court has considered

that aspect of the matter and condoned the delay and allowed the substitution petition.

5. It is well settled that mere title is not decisive for deciding the nature of this application. There appears to be no bar as such for filing consolidated

application for the relief under Order 22 Rule 3 or 4 CPC and another under Order 22 Rule 9 CPC and for condonation of delay under section 5 of the

Limitation Act. Even if Rules of procedure require for filing separate application for separate reliefs, even then, there can be no justification for filing

three separate applications when the reliefs sought in the three applications are connected or when reliefs sought are dependent upon reliefs required

to be obtained for getting complete relief.

6. In view of the above reasons the approach of the trial court was fully justified and the trial court rightly did not demand different application for the

same relief. In a case where the relief of setting aside of abatement has not been specifically claimed, the court may consider the complete application

to find out what is the prayer and if case is made out for condonation and for setting aside of abatement of proceedings, the Court may condone the

delay, may set aside abatement of the suit even without specific prayer. Relief of impleading of legal representatives of one of the party may be if

case is made out on the basis of the facts pleaded in the application, can be considered as an application for setting aside of abatement, which is a

prayer inherently within the prayer for seeking relief of taking on record the legal representatives of the deceased in the suit.

7. Admittedly, defendant no.7 and 2(d) have left for their heavenly abode.

8. In view of the above facts and reasons the Court finds that there is no illegality in the impugned order.

9. C.M.P. No.85 of 2025 is accordingly dismissed.