

(2006) 06 JH CK 0016

Jharkhand High Court

Case No: None

Md. Maqbul Mian and
Others

APPELLANT

Vs

Sibu Ram Munda and
Others

RESPONDENT

Date of Decision: June 14, 2006

Citation: (2007) 1 JCR 190

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Nrendra Nath Tiwari, J.
Heard the parties.

2. In this application the applicants-appellants have prayed for substitution of the heirs and legal representatives of the deceased respondent Nos. 3 and 4 by setting aside the abatement and condoning the delay in filing the substitution petition. It has been stated that appellants came to know about the death of the said respondents when the same was informed by a petition dated 9.8.2005 filed by the defendants-respondents. It has been stated that thereafter a letter was immediately sent by the counsel informing the same to the petitioners who collected the necessary information and managed fund and immediately rushed to this Court and filed this application on 12.9.2005. It has been submitted that there is no wilful delay or laches on the part of the appellants and they were prevented from taking steps for substitution as they had no knowledge about the death on the said respondents earlier and as soon as they came to know about the same, they immediately took steps and filed this application.

3. Mr. Amar Kr. Sinha, learned Counsel appearing on behalf of the appellants, submitted that Order XXII, Rule 10-A of CPC casts a duty on the counsel of the party to communicate to the Court about the death of the party, but no information was given by

learned Counsel for the respondents, Though the defendant Nos. 3 and 4 died long back, but. the same was informed only on 9.8.2005 and immediately thereafter the appellants look steps for substitution.

4. Mr. P.K. Bhowmik, learned Sr. counsel appearing on behalf of the respondents, on the other hand, submitted that only on the ground of the provision made under Order XXII, Rule 10-A, CPC, the appellants can not absolved from their duty to take steps for substitution within the prescribed time. Learned Counsel submitted that the appellants had full knowledge about the death of the said respondents and they deliberately did not taken step for substitution. The appellants could not make out any valid ground for condonation of delay and for setting aside abatement.

5. After hearing the submissions of learned Counsel and considering the documents on record, I find that though the appellants are the co-villagers, an application was filed in the trial Court mentioning that whereabouts of the said respondents were not known to the appellants. In that petition it was stated that the said respondents had left the village and had been living elsewhere and the appellants had no knowledge. Considering that the parties have already proceeded with this appeal for more than two decades and good ground has been made out by the appellants for condonation of delay, this application is allowed. The delay in taking steps for substitution is condoned. The abatement is set aside. Let the heirs and legal representatives of the deceased respondent Nos. 3 and 4, as described in Paragraphs 3 and 4 respectively of this application, be substituted by deleting the names of the said deceased respondents from the cause title.

6. However, since the respondents have to contest due to the delayed filing of this application and have to incur expenses for the same, this application is allowed subject to payment of the cost of Rs. 1,000 (one thousand only) to the respondents within a period of three weeks from today.

I.A. No. 2371/2005

7. In this application the appellants applicants have prayed for substitution of the heirs and legal representatives of the appellant No. 5 who died leaving behind the legal representatives, described in Para-graph 3 of the application. It has been stated that the appellants are illiterate villagers and as such they could not approach their counsel within the prescribed time and there is a delay of about six months in filing the substitution petition. The appellant No. 5 died on 18.3.2005 whereas the steps could be taken on 12.9.2005.

8. The respondents have appeared, but they have not contested this application.

9. Considering the above, this application is allowed and the delay in filing the substitution petition is condoned. Let the heirs and legal representative"s of the deceased appellant No. 5. as mentioned in Paragraph No. 3 of this application, be substituted on deleting the name of the said deceased appellant from the cause title of the memo of this appeal.