

(2010) 01 JH CK 0040
Jharkhand High Court
Case No: None

Tahir Ahmad and Md. Monavar
Ahmad

APPELLANT

Vs

Tata Iron and Steel Company
Limited

RESPONDENT

Date of Decision: Jan. 8, 2010

Acts Referred:

- Limitation Act, 1963 - Section 5

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amareshwar Sahay, J.

This appeal is held to be maintainable.

2. Heard the parties and with their consent, this appeal is being disposed of at this stage itself on its merit.

3. The appellants have preferred this appellant against the order dated 06/07/2005, whereby, the learned 1st Additional District Judge, Jamshedpur, rejected the petition filed bon behalf of the appellants for substituting the heirs of the appellant, who died during pendency of the appeal on 05/12/2004, on the ground that the application for substitution was barred by limitation since no sufficient ground was shown by the appellants for not filing the application within time.

4. It appears that the sole appellant namely Md. Ahmad died on 05/12/2004 and for substituting the name of his heirs, an application was made on 16/06/2005. A separate application for condoning delay in filing the belated application for substitution was also filed by the appellants.

5. In sum and substance, the reason for rejecting the prayer for substitution by the 1st Additional District Judge, Jamshedpur, is that no sufficient reason was shown by the appellant for filing the application within time. There is no dispute that the application for substitution was filed after about six months from the date of death of the appellant while the time prescribed was only 90 days.

6. The Apex court in several judgments while dealing with the provision of Section 5 of the Limitation Act and Order 22 of C.P.C. has held that the primary function of a court is to adjudicate dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause transformed into a good cause. Reference in this regard may be made to the case of [N. Balakrishnan Vs. M. Krishnamurthy](#), " and in the case of [Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others](#), ".

7. In the case of [Shakuntala Devi Jain Vs. Kuntal Kumari and Others](#), ", the Supreme Court has held as follows:

Sufficient cause u/s 5 of the Limitation Act should receive liberal construction so as to advance substantial justice.

8. In the case of [S. Amarjit Singh Kalra \(dead\) by Lrs. and Others and Smt. Ram Piari \(dead\) by L.Rs. and Others Vs. Smt. Pramod Gupta \(dead\) by Lrs. and Others](#), " has held as follows:

It should be construed as a flexible tool of convenience with a view to do real, effective and substantial justice.

9. In view of the settled principle of law noticed above, I hold that the court below has taken unreasonably strict view in rejecting the petition for substitution on the ground of limitation. In order to do complete real and effective justice the court below ought to have decided the appeal on its merit.

10. For the reasons stated above, this appeal is allowed. The impugned order dated 06/07/2005, passed by the 1st Additional District Judge, Jamshedpur is hereby set aside and the Court below is directed to substitute the name of the heirs of the deceased appellant and proceed to dispose of the appeal on its own merit.