

IN THE COURT OF CIVIL JUDGE (JR. DIVISION) CUM JMFC, BENIPATTI (MADHUBANI)

Title Suit Case - 167/2011

Date of order of proceeding	Order with signature of the Court	Remarks
1.	2.	3..
<u>17.08.2026</u>	<u>Order</u> - Interlocutory applications filed by the applicant, Birendra Jha who is legal representative of Plaintiff Rajendra Jha in T.S. 167/2011. - An Interlocutory application filed under Section 5 of the Limitation Act, 1963, praying for the condonation of a delay as the application was brought beyond the prescribed time and to set aside the abatement of the suit. - An Interlocutory application Filed under Order XXII Rule 9 of the Code of Civil Procedure (CPC), 1908, praying to set aside the automatic abatement of the suit. Filed under Order XXII Rule 3 of the CPC, seeking to substitute the sole deceased plaintiff with legal representative. <u>Facts and Background:</u> The original plaintiff passed away on 25-06-2025. An application for substitution was required within 90 days, and a plea to set aside the automatic abatement was needed within 60 days thereafter. The instant applications were filed on 27-01-2026, resulting in a delay, prompting requests to condone the delay and set aside the abatement. - The applicant cited that the plaintiff had left six daughter behind after death it was difficult to bring all the legal representative to the record and lack of awareness regarding court timelines as reasons for the delay. - The defendant contested the applications, arguing that the plea is a pretext for negligence and that a valuable right to defend had accrued, opposing the setting aside of the abatement. <u>Findings and Legal Reasoning:</u> Upon hearing both sides, the Court noted that "sufficient cause" must be construed liberally to ensure substantive justice, as highlighted in <u>Mithailal Dalsangar Singh v. Annabai Devram Kini</u> (2003) 10 SCC 691. It is held that "<u>The courts have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disintitiled himself from seeking the indulgence of the court.</u>" - It is noted with several Judicial Precedent that courts should not adopt a hyper-technical approach that sacrifices merit for procedural delays, unless there is gross negligence. Given that the applicant is the legitimate	

legal heir and the delay was not due to bad faith, the Court found sufficient cause to condone the delay and allow the substitution to prevent irreparable injury to the applicant's rights, balancing this with costs imposed on the applicant.

9. Therefore, Interlocutory applications is allowed. (Substitution) is allowed.

10. **The applicant is substituted as the plaintiff, subject to a cost of ₹5,000/-**

11. The office is to update the cause title. The substituted plaintiff had accepted and have no objection with the original plaint.

List the matter on for defendant evidence.

Manish Ranjan
CJJD Cum JMFC, Benipatti.