

The court of Addl. Sessions Judge-XVIII

T.S- 28 of 2017

Jitendra Kumar**Petitioner/plaintiff**

versus

Brajendar Kumar and others..... Defendants/Opposite Party

O R D E R

29.10.2024

(1) To day this case is fixed for order on petition filed on behalf of the petitioner under order 22 Rule 4 of the C.P.C. on 27-02-2024 for substitution of legal heirs. Consequent upon O.P No.4 has also filed the rejoinder on behalf of O.P.No.4 and then after a petition has also filed on behalf of plaintiff u/o-22 rule 9 C.P.C. R/w Section 151 C.P.C on 10-06-2024 for setting aside the abatement of the suit and then after filed a petition U/S 5 of Limitation Act for condoning the delay in filing the substitution petition.

(2) In this petition plaintiff/petitioner submitted that this application is being filed for substitution of legal heirs of opposite party No. 5 namely Archana Sharma in her place who died on 24.11.2023 and so to expunge the name of Opposite party No. 5 from the record of this case and further for condoning the delay if any, caused in filing the present substitution . Legal heirs whose details and given below;

1. Ajay Kumar Sharma, aged about 62 years S/o Late Ram Pyare Singh.
2. Anup Kumar, aged about 36 S/O Ajay Kumar Sharma
3. Sandeep Kumar, aged about 35 S/O Ajay Kumar Sharma All residents of flat No. 102 Taluka Apartment, P.S- Budha Colony, District- Patna.

(3) Petitioner further submitted that after the death of the o.p. no. 5 Sister of the petitioner, whole family including the petitioner came under dire straits and soon the petitioner relieved off the shock and took into account the said suit proceeding and met his lawyer in domain to conduct the case where the petitioner was advised to file substitution petition in furnishing the names of legal heirs and representative of

The court of Addl. Sessions Judge-XVIII

O.P. No. 5 (deceased).

It is therefore prayed that your Honour may graciously be pleased to allow the present application and further be pleased to substitute the names of legal heirs of the o.p. no. 5 in the present suit in place of O.P. no. 5 (deceased) for the ens of justice.

(4) Petitioner further submitted that the plaintiff signed and verified the substitution petition on 22.02.2024 and handed over the said petition to his lawyer for filing the same in the case. The plaintiff/petitioner as filed also condonation petition u/s 5 of limitation Act for condoning the delay in filing the substitution petition and further submitted that the next date already has been fixed in the case on 26.02.2024 and due to festival of Sabe Barat the court has been closed on 26.02.2024 and as such the lawyer of the plaintiff filed the said substitution petition of 27.02.2024 in the case. Further submitted that the petitioner plaintiff has not committed any will full latches in filing the substitution petition within time in the case. It is submitted that due to next date fixed in the case on 26.02.2024 and due to closer of the court on fixed date the substitution petition filed on 27.02.2024. It is, therefore, prayed that your honour may be pleased to condone the delay of 6 days in filing the substitution petition and allow the substitution petition filed on 27.02.2024 in the case. Petitioner has a filed a petition u/o 22 rule a CPC R/W Section 151 C.P.C. for setting aside the abatement of the suit and prayed that your honor may be pleased to set aside the abatement if any and allow the substitution in place of defendant Archana Sharma.

(5) The opposite party has oppose the prayer of petitioner and submitted that as regards the statement made in petition dated 27.02.2024 under reply it is stated that Archana Sharma died on 24.11.2023 and the present petition for substitution of legal heirs filed on 27.02.2024 beyond the period of limitation of 90 days and as such the suit it abated since the date death of said Archana Sharma. O.P. has further submitted that after abatement of suit no petition for setting aside abatement filled withing the period of limitation of 60 days and hence the suit is abated as against the opposite party Archana Sharma and the right to sue does not survive against her

The court of Addl. Sessions Judge-XVIII

legal heirs u/o 22, Rule-4(3) of C.P.C. O.P further submitted that the petitioner has not filed any limitation petition U/S 5 of Limitation Act, nor assigned any sufficient reason of such ignorance and hence the suit is abated. It is, therefor, prayed that your honour be pleased to reject the petition of petitioner dated 27.02.2024.

(6) Perused the case record it appears that case record was running for the plaintiff's evidence. Abatement results in interruption of the suit, suspending its progress until new parties are brought before the Court, and if this is not done within the proper time, or the Court does not exercise its discretion in extending the time, the suit comes to an end for good. The law, therefore, imposed an obligation upon the party seeking resuscitation of this action after the lapse of the period of limitation to furnish grounds justifying condonation of the delay. If the applicant satisfies the Court that there was no want of diligence on his part, that he acted in good faith and no in a negligent manner his inaction may not be visited with grave consequences. O.P No.5 namely Archana Sharma has died on 24-11-2023 and substitution petition has been filed on 27-02-2024. The petitioner has also filed a petition for condoning the delay of six days in filing the substitution petition and also filed for setting aside the abatement of the suit. There is only six days delay from the prescribed period of filing substitution petition. After considering all facts and material available on record it appears that there are circumstances for condoning delay of six days and accordingly petition of petitioner is being **allowed** and petitioner is directed to take further steps. put up on 22.11.2024

Dictated

Addl. Sessions Judge-XVIII,

Patna.