



IN THE HIGH COURT OF JHARKHAND AT RANCHI

2015:JHHC:19885

M.A. No. 70 of 2004

Mir Asraf Hussain alias Ashu, son of Late Mir Abdul Gaffor, by faith Muslim, by occupation Service and cultivation, resident of H.B. Road, near Plaza Cinema, Tharpakhana P.O.-Lalpur, P.S. Lalpur, Town & District: Ranchi

...Appellant

Versus

1. Mir Manjur Hussain, s/o Late Mir Abdul Gaffur.
2. Jumani Khatoon, d/o Late Mir Abdul Gaffur.
3. Mir Ali Hussain alias Hasnu, s/o Late Mir Abdul Gaffur.
4. Jaheda Khatoon alias Jadwa, d/o Late Mir Abdul Gaffur.
5. Tara Khatoon alias Bhugli, d/o Late Mir Abdul Gaffur.
6. Manu Khatoon, d/o Late Mir Abdul Gaffur.

All are by faith Muslim, by occupation (1&3) service and cultivation and (2,4,5 & 6) housewife, resident of H.B. Road, near Plaza Cinema, Tharpakhana, P.O. Lalpur, P.S. Lalpur, Town and District: Ranchi

.....Respondents

Coram: THE HON'BLE MR JUSTICE P.P. BHATT

For the Appellant :M/s. Prabhat Singh & Saket Upadhaya, Advocates

For the Respondents : M/s. Ayush Aditya & S. Shekhar, Advocates

(I.A. No. 306 of 2014)

25/03.02.2015: Learned counsel for the applicant does not press this interlocutory application.

Accordingly, I.A. No. 306 of 2014 stands disposed of as not pressed.

(I.A. No. 1597 of 2014)

Present interlocutory application has been filed under Section 5 of the Limitation Act for condonation of delay of 419 days' in filing the application for setting aside the abatement and impleading the legal representatives of the deceased appellant, namely, Mir Asraf Hussain alias Ashu, son of Late Mir Abdul Gaffor, who died on 19.10.2012, leaving behind his legal heirs, as described in cause title on internal page-3 of the application. Present application is supported by affidavit.

Learned counsel appearing for the other side has no objection, if the present interlocutory application is allowed.

For the reasons stated in the application as well as in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Ram Sumiran and others** versus **D.D.C. and others**, reported in **AIR 1985 Supreme Court 606**, present application is allowed and accordingly, abatement is ordered to be set aside and delay in filing the substitution petition is hereby ordered to be condoned.

Accordingly, I.A. No. 1597 of 2014 stands disposed of.

(I.A. No. 8946 of 2013)

Present interlocutory application was initially filed under Section 151 of CPC for substitution of the legal heirs of the deceased appellant, namely, Mir Asraf Hussain alias Ashu, son of Late Mir Abdul



Gaffor, who died on 19.10.2012, leaving behind his legal heirs as described in page-3 of the application. 2015:JHHC:19885

After filing of this application, supplementary affidavit was filed incorporating relevant provisions of law i.e. Order XXII Rule 3 read with Rule 9 of the CPC for setting aside the abatement and impleading the legal representatives of the deceased appellant as necessary parties in the instant appeal. Present application is supported by affidavit as well as death certificate vide Annexure-IA/1.

Learned counsel appearing for the other side has no objection, if the present interlocutory application is allowed.

For the reasons stated in the application, same is allowed and accordingly, legal heirs of deceased appellant are ordered to be substituted.

Necessary amendment be carried out in cause title of appeal, accordingly, with red ink.

Accordingly, I.A. No. 8946 of 2013 stands disposed of.

(P.P. Bhatt, J.)

S.B.