

IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No. 435 of 1991 (P)

Md. Sharif @ Baku Mian				Appellant
<i>Versus</i>				
Jumrati Mian				Respondent

CORAM : HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellant	: Mr. Rohit Ranjan Sinha, Advocate
For the Respondent	: None

Order No.21 Dated- 21.06.2022

I.A. No.3366 of 2022

Heard the parties.

Learned counsel for the legal representatives of the sole deceased appellant submits that this interlocutory application has been filed with a prayer to substitute the legal representatives of the sole deceased appellant -Md. Sharif @ Baku Mian. It is submitted by the learned counsel for the legal representatives of the sole deceased appellant that the sole appellant died on 07.11.2005 leaving behind his only eighteen legal representatives whose names, parentage and addresses have been mentioned at paragraph no.8 of this interlocutory application. It is further submitted that consequent upon the death of the sole appellant, I.A. No.322 of 2006 has been filed with a prayer for substitution being the legal representatives of the deceased sole appellant and they have also filed a petition for condonation of delay. It is next submitted that in I.A. No.323 of 2006 vide order dated 26.06.2007, this Hon'ble Court directed to supply a copy of the substitution petition and limitation petition upon the counsel for the respondent within a week and on failure, it was ordered that the I.A. No.323 of 2006 will be rejected without further reference to the Bench. It is next submitted that due to non-compliance of the said order by the learned counsel for the applicants, the appeal stood dismissed for default by the order dated 31.07.2007. Thereafter, C.M.P. No.222 of 2014 was filed for restoration of the second appeal and the second appeal was restored on 20.09.2019. It is further submitted that unless

the delay in filing the petition for substitution is condoned and the abatement if any, is set aside and the prayer for substitution of the legal representatives of the deceased sole appellant is allowed, the appellant will be highly prejudiced.

Considering the aforesaid facts and circumstances of the case, the first part of the prayer made in the petition to condone the delay in filing the petition for substitution and the abatement, if any, is set aside and the prayer to substitute the legal representatives of the sole deceased appellant as appellant nos. 1 (a) to 1 (r) is allowed.

Registry is directed to incorporate the names, parentage and addresses of the said sole appellant as appellant nos. 1 (a) to 1 (r) in the cause title of the appeal memo with red ink and mention the word "Dead" against the name of the sole deceased appellant.

Mr. Rohit Ranjan Sinha, Advocate has already filed power on behalf of the appellant nos. 1 (a) to 1 (r).

Learned counsel for the appellant submits that in this interlocutory application prayer has also been made to substitute the legal representatives of the sole deceased respondent- Jumrati Mian who died in the month of May, 2012. It is next submitted that as the legal representatives of the deceased sole appellant were not substituted hence, they could not substitute the legal representatives of the sole respondent. Hence, the delay has occurred in making the prayer for substitution of the legal representatives of the sole respondent. It is further submitted that unless the delay in filing the petition for substitution is condoned and the abatement if any, is set aside and the prayer for substitution of the legal representatives of the deceased sole respondent is allowed, the appellants will be highly prejudiced.

Considering the aforesaid facts and circumstances of the case, the delay in filing the petition for substitution is condoned and the abatement, if any, is set aside and the prayer to substitute the legal representatives of the sole deceased respondent as respondent no. 1 (a) to 1 (f) is allowed.

Registry is directed to incorporate the names, parentage and addresses of the said sole respondent as respondent no. 1 (a) to 1 (f) in the cause title of the appeal memo with red ink and mention the word “Dead” against the name of the sole deceased respondent.

This interlocutory application is disposed of accordingly.

(Anil Kumar Choudhary, J.)

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The appellants are directed to file requisites for service of notice on the respondent nos. 1 (a) to 1 (f) by registered post with A/D as well as under ordinary process within two weeks, failing which, this appeal shall stand dismissed without further reference to the Bench.

Rule is made returnable within six weeks.

List this appeal after receipt of the service report of the notice issued to the respondent nos. 1 (a) to 1 (f).

Sonu-Gunjan/-

(Anil Kumar Choudhary, J.)