

IN THE HIGH COURT OF JHARKHAND AT RANCHI
SA No. 188 of 2008

Smt. Sajda Khatoon ... Appellant
Versus
Kulsum Bibi ... Respondent

With
SA No. 190 of 2008

Smt. Sajda Khatoon ... Appellant
Versus
Sohel Akhtar ... Respondent

Coram: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellant : Mr. Arshad Hussain , Adv.
For the Respondent : Mr. Afaque Ahmad , Adv.
Mr. Altaf Hussain , Adv.

09 / 22.07.2024

I.A. Nos. 10233 of 2023 with 10235 of 2023 (in SA No. 188 of 2008)

Heard the parties.

Learned counsel for the legal representatives of the sole deceased appellant submits that the Interlocutory Application no. 10233 of 2023 has been filed with a prayer to substitute the legal representatives of the deceased sole appellant- Late Sajda Khatoon who died on 04.01.2019 leaving behind her only 07 legal representatives whose names, addresses and parentage has been mentioned in paragraph 3 of the interlocutory application. It is next submitted that the Interlocutory Application no. 10235 of 2023 has been filed with a prayer to condone the delay in filing the petition for substitution and to set aside the abatement of the appeal in respect of the deceased sole appellant. It is next submitted that the sole deceased appellant was looking after the case and immediately after her death, her legal representatives could not know about the pendency of this second appeal, hence, they could not take immediate step for substitution; which resulted in delay in filing the petition for substitution and unless the

delay in filing the petition for substitution of the only 07 legal representative of the deceased sole appellant is condoned, the abatement of the appeal in respect of the deceased sole appellant, if any, is set aside and the prayer for substitution of the only 07 legal representatives of the deceased sole appellant whose names, addresses and parentage has been mentioned in paragraph 3 of the Interlocutory Application no. 10233 of 2023 is allowed, the legal representatives of the sole deceased appellant will be highly prejudiced.

Learned counsel Mr. Arshad Hussain and associates have filed vaklatananma on behalf of all 07 legal representatives of the sole deceased appellant.

Considering the aforesaid facts and circumstances of the case, the delay in filing the petition for substitution is condoned, the abatement in respect the sole deceased appellant, if any, is set aside and the prayer to substitute the only 07 legal representatives of the sole deceased appellant as appellant nos. 1(a) to 1(g) of SA No. 188 of 2008 whose names, addresses and parentage has been mentioned in paragraph 3 of the Interlocutory Application no. 10233 of 2023 of SA No. 188 of 2008, is allowed.

Registry is directed to incorporate the names, parentage and addresses of the only 07 legal representatives of the sole deceased appellant as appellant nos. 1(a) to 1(g) in the cause title of the appeal memo of SA No. 188 of 2008 with 'Red Ink'. Registry is also directed to mention the word 'Dead' against the name of the sole deceased appellant in the cause title of the appeal memo.

These interlocutory applications are disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

I.A. Nos. 10236 of 2023 with 10234 of 2023 with 6404 of 2024 (in SA No. 188 of 2008)

Learned counsel for the legal representatives of the sole deceased appellant submits that the Interlocutory Application No. 10236 of 2023 has been filed with a prayer to substitute the legal representatives of the sole deceased respondent of SA No. 188 of 2008 namely Kulsum Bibi who died on 03.12.2016 leaving behind her only 05 legal representatives whose names, addresses and parentage have been mentioned in paragraph 5 of the interlocutory application but out of them, the legal representative, whose name is appearing at sl. no. '5' of para 5 of this interlocutory application namely 'Mumtaz Bano' has also died leaving behind her only 04 legal representatives whose names, addresses and parentage has been mentioned in paragraph 8 of the Interlocutory Application no. 6404 of 2024, thus, the sole deceased respondent of SA No. 188 of 2008 is at present is survived by her 08 legal representatives, out of which only 04 legal representatives whose names, addresses and parentage has been mentioned at sl. no. 1 to 4 in paragraph 5 of the Interlocutory Application No. 10236 of 2023 and rest only 04 legal representatives whose names, addresses and parentage has been mentioned in para 8 of Interlocutory Application no. 6404 of 2024.

It is next submitted that the Interlocutory Application No. 10234 of 2023 has been filed with a prayer to condone the delay in filing the petition for substitution and to set aside the abatement of the appeal in respect of the sole deceased respondent of SA No. 188 of 2008. It is next submitted that the sole deceased appellant was looking after the case, hence, the legal representatives of the sole deceased appellant could not immediately know about the death of the respondent and also about the pendency of SA No. 188 of 2008, hence, they could not take immediate step for substitution, resulting in delay in filing the petition for substitution and unless the delay in filing the petition for

substitution of the only 08 legal representatives of the sole deceased respondent of SA No. 188 of 2008 is condoned, the abatement of the appeal in respect of the sole deceased respondent if any, is set aside and the prayer for substitution of the only 08 legal representatives of the sole deceased respondent whose names, addresses and parentage has been mentioned in paragraph 5 of the Interlocutory Application No. 10236 of 2023 and para 8 of Interlocutory Application no. 6404 of 2024 in SA No. 188 of 2008 is allowed, the legal representatives of the sole deceased appellant will be highly prejudiced.

Considering the aforesaid facts and circumstances of the case, the delay in filing the petition for substitution is condoned, the abatement of the appeal against the sole deceased respondent of SA No. 188 of 2008, is set aside and the prayer to substitute the only 08 legal representatives of the sole deceased respondent as respondent nos. 1(a) to 1(h) whose names, addresses and parentage have been mentioned in paragraph 5 of the Interlocutory Application No. 10236 of 2023 and para 8 of Interlocutory Application no. 6404 of 2024 in SA No. 188 of 2008, is allowed.

Registry is directed to incorporate the names, parentage and addresses of the only 08 legal representatives of the sole deceased respondent of SA No. 188 of 2008 as respondent nos. 1(a) to 1(h) in the cause title of the appeal memo with 'Red Ink'. Registry is also directed to mention the word 'Dead' against the name of the sole deceased respondent of SA No. 188 of 2008, in the cause title of the appeal memo.

These interlocutory applications are disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

I.A. No. 11333 of 2018

This interlocutory application has been filed on behalf of the son of the sole deceased respondent of S.A. No. 188 of 2008

intimating therein that the deceased sole respondent of SA No. 188 of 2008 has died.

In view of the aforesaid order for substitution of the legal representatives of the sole deceased respondents in I.A. Nos. 10236 of 2023 with 10234 of 2023 with 6404 of 2024 in SA No. 188 of 2008, this interlocutory application be treated as disposed of being inforamatory in nature.

This interlocutory application is disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

I.A. Nos. 10231 of 2023 with 10230 of 2023 (in SA No. 190 of 2008)

Learned counsel for the legal representatives of the deceased sole appellant submits that the Interlocutory Application no. 10231 of 2023 has been filed with a prayer to substitute the legal representatives of the sole deceased appellant namely Late Sajda Khatoon in SA No. 190 of 2008 who died on 04.01.2019 leaving behind her only 07 legal representatives whose names, addresses and parentage has been mentioned in paragraph 3 of the interlocutory application.

It is next submitted that Interlocutory Application No. 10230 of 2023 has been filed with a prayer to condone the delay in filing the petition for substitution and to set aside the abatement of the appeal in respect of the sole deceased appellant of SA No. 190 of 2008. It is next submitted that the sole deceased appellant was looking after the case and immediately after her death, her legal representatives could not know about the pendency of this second appeal, hence, they could not take immediate step for substitution, resulting in delay in filing the petition for substitution and unless the delay in filing the petition for substitution of the only 07 legal representative of the sole deceased appellant of SA No. 190 of 2008 is condoned, the abatement of the appeal in respect of the sole deceased appellant if any, is set aside and the prayer for substitution of the only 07 legal representatives of the sole deceased appellant of SA No. 190 of 2008 whose names,

addresses and parentage have been mentioned in paragraph 3 of the interlocutory application no. 10231 of 2023, is allowed, the legal representatives of the sole deceased appellant will be highly prejudiced.

Considering the aforesaid facts and circumstances of the case, the delay in filing the petition for substitution is condoned, the abatement of the appeal in respect of the sole deceased appellant, is set aside and the prayer to substitute the only 07 legal representative of the sole deceased appellant whose names, addresses and parentage has been mentioned, in paragraph 3 of the interlocutory application no. 10231 of 2023 as appellant nos. 1(a) to 1(g), is allowed.

Registry is directed to incorporate the name, parentage and address of the only 07 legal representative of the sole deceased appellant as appellant nos. 1(a) to 1(g) in the cause title of the appeal memo of S.A. No. 190 of 2008 with 'Red Ink'. Registry is also directed to mention the word 'Dead' against the name of the sole deceased appellant of S.A. No. 190 of 2008 in the cause title of the appeal memo.

These interlocutory applications are disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

SA No. 188 of 2008

Issue notice to the respondent nos. 1(a) to 1(h) in SA No. 188 of 2008.

The legal representatives of the sole deceased appellant are directed to file requisites of notice through both processes i.e. under registered post with A/D as well as through the process of the court within three weeks, failing which, this appeal shall stand dismissed without further reference to the Bench.

Rule is made returnable within six weeks.

List both these appeals after receipt of the service report of the notice issued to said respondents.