

Ram Kumar Vishwakarma & Ors. Appellants
Versus
 Bishwanath Singh & Ors. Respondents

For the Appellants : Mr. Arbind Kr. Sinha, Advocate
For the Respondents : Mr. A. K. Sahni, Advocate

I.A. No.3270 of 2015

In view of the submission of the learned counsel for the appellants, I.A. No.3269 of 2015 and I.A. No.3270 of 2015 is hereby disposed off as not pressed.

I.A. No.5798 of 2015

It is submitted by the learned counsel for the appellants that respondent No.01 namely, Bishwanath Singh died on 16.08.2007, leaving behind his legal heirs/ representatives as mentioned in para - 2 of I.A. No.5795 of 2015, and respondent No.05 namely, Jamuna Tiwary died on 10.06.2010, leaving behind his legal heirs/ representatives as mentioned in para - 3 of I.A. No.5795 of 2015 and his wife had predeceased him. It is submitted that father of the appellants namely, Nathuni Mistry died on 04.11.2007 and some dispute arose with respect to the properties including the scheduled properties and the said family dispute was settled in June, 2015. Thereafter, appellant No.01, approached the learned counsel and enquired regarding the status of the present appeal and on 10.06.2015 he was informed regarding death of one of the appellants. That the reason for delay in filing the present application was due to the family dispute with respect to the properties left by the late father of the appellants and since they were unaware of

the procedure of law regarding substitution, the legal heirs of late Nathuni Mistri were not interested in prosecuting the case due to lack of funds resulting in the delay. It is submitted that earlier I.A. No.3269 of 2015 along with I.A. No.3270 of 2015 were filed, but, the Court had directed to file fresh applications accordingly, the present applications have been filed for condoning the delay of 2700 and 1770 days in filing application for substitution of legal heirs/ representatives of respondent No.01 and respondent No.05 respectively. It is urged that there has been no deliberate or intentional laches rather the delay occurred on account of family dispute between the appellants after the death of their father. It is prayed that abatement, if any, be set aside, and delay in filing the substitution application be condoned as the appellants will suffer irreparable loss and injury if the same is not allowed.

Mr. A. K. Sahni, learned counsel appearing on behalf of the respondents has not raised any objection.

Heard. Considering the reasons assigned in the supporting affidavits, let the legal heirs/ representatives of deceased respondent Nos.01 & 05, as mentioned in paras - 02 & 03 of I.A. No.5795 of 2015 be substituted in their place subject to payment of a cost of Rs.1,000/- (Rupees one thousand) to the respondents.

Learned counsel for the appellants shall carry out the necessary correction in red ink in the cause title of the appeal.

Accordingly, I.A. No.5795 of 2015 and I.A. No.5798 of 2015 stand allowed.

S.A. No.218 of 2004

Learned counsel for the appellants shall file requisite of notice under ordinary process to be served upon the newly substituted legal heirs of deceased respondent Nos.01 & 05, within two weeks, failing which, the memo of appeal shall stand dismissed without further reference to a Bench.

Put up on 29.01.2016.

(AMITAV K. GUPTA, J.)