

IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No. 178 of 2009

Maksud Alam & Ors. Appellants
Versus
Jahur Mian & Ors. Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellants : Mr. S.K. Sharma, Advocate
For the Respondents : Mr. Arbind Kr. Sinha, Advocate

Order No.10 Dated- 18.07.2022

I.A. No.10303 of 2019

Heard the parties.

The learned counsel for the appellants seeks permission of this Court to withdraw this interlocutory application.

Accordingly, this interlocutory application is dismissed as withdrawn.

(Anil Kumar Choudhary, J.)

I.A. No.6510 of 2020 with I.A. No.6509 of 2020

Heard the parties.

Learned counsel for the appellants submits that interlocutory application no.6510 of 2020 has been filed with a prayer to substitute the legal representatives of the deceased respondent no.12 – Samod Mian who died on 03.03.2011. It is next submitted that the deceased respondent no.12 – Samod Mian died leaving behind his only five legal representatives whose names, parentage and addresses have been mentioned in para-13 of the instant interlocutory application.

Interlocutory Application no. 6509 of 2020 has been filed with a prayer to condone the delay in filing the petition for substitution and setting aside the abatement, if any. It is further submitted that the father of the appellants Md. Taslim Mian (now deceased) used to conduct the instant second appeal and these appellants had not much concern with the proceedings of this appeal and after the death of their father, the appellants have been substituted in the instant second

appeal in the place of their father and they have started pursuing the appeal. It is next submitted that the petitioners are engaged in white washing, wall putty and painting works and to earn their livelihood they have to often go outside from their native places, hence the petitioners could not immediately know about the death of the respondent no.12. Hence, the petition for substitution could not be filed within time. It is then submitted that the delay in filing the petition for substitution is neither deliberate nor intentional. It is next submitted that unless the delay is condoned and the abatement, if any, is set aside and the prayer to substitute the only five legal representatives of the deceased respondent no.12- Samod Mian as respondent nos. 12 (a) to 12 (e) is allowed, the appellants will be highly prejudiced.

Considering the facts and circumstances of the case, the delay in filing the petition for substitution of the only five legal representatives of the deceased respondent no.12- Samod Mian as respondent nos. 12 (a) to 12 (e) is condoned and the abatement, if any, is set aside and the prayer to substitute the only five legal representatives of the deceased respondent no.12- Samod Mian as respondent nos. 12 (a) to 12 (e) whose names, parentage and addresses have been mentioned in paragraph no. 13 of the interlocutory application no. 6510 of 2020 is allowed.

Registry is directed to incorporate the names, parentage and addresses of the said only five legal representatives of the deceased respondent no.12- Samod Mian as respondent nos. 12 (a) to 12 (e) in the cause title of the appeal memo with red ink and mention the word "Dead" against the name of the deceased respondent no.12- Samod Mian.

Both the interlocutory applications are disposed of accordingly.

(Anil Kumar Choudhary, J.)

I.A. No.5216 of 2020 with I.A. No.5217 of 2020

Heard the parties.

Learned counsel for the appellants submit that interlocutory application no.5216 of 2020 has been filed with a prayer to substitute the legal representatives of the respondent no.1 -Jahur Mian, respondent no.5 -Most Ugani Bibi, respondent no.14 -Kuleshwar Singh and respondent no.17 -Rajendra Singh who died on 22.01.2017, 04.08.2015, 16.02.2017 & 21.11.2014 respectively. It is next submitted by the learned counsel for the appellants that the deceased respondent no.1 -Jahur Mian died leaving behind his only five legal representatives, deceased respondent no.5 -Most Ugani Bibi died leaving behind her only two legal representatives, deceased respondent no.14 -Kuleshwar Singh died leaving behind his only five legal representatives and the deceased respondent no.17 -Rajendra Singh died leaving behind his only two legal representatives whose names, parentage and addresses have been mentioned in paragraph nos. 9, 10, 11 & 12 respectively of the interlocutory application no. 5216 of 2020. It is then submitted that out of the only two legal representatives of the deceased respondent no.5 - Most Ugani Bibi, the legal representative whose name has been mentioned at serial no.B of the interlocutory application no. 5216 of 2020 is already party to this appeal being the respondent no.4.

Interlocutory Application no. 5217 of 2020 has been filed with a prayer to condone the delay in filing the petition for substitution and setting aside the abatement, if any. It is further submitted that the father of the appellants Md. Taslim Mian (now deceased) used to conduct the instant second appeal and these appellants had no much concern and after the death of their father, the appellants have been substituted in the instant second appeal in the place of their father and they have started prosecuting this appeal. It is next submitted that the petitioners are engaged in white washing, wall putty and painting works and to earn their livelihood they have to often go outside from their native palces, hence the petitioners could not immediately know about the death of the respondent nos.1, 5, 14 & 17. Hence, the petition for substitution could not be filed within time. It is then submitted that

the delay in filing the petition for substitution is neither deliberate nor intentional. It is next submitted that unless the delay is condoned and the abatement, if any, is set aside and the prayer to substitute the only five legal representatives of the deceased respondent no.1 –Jahur Mian as respondent no.1(a) to 1(e), the only one legal representatives deceased respondent no.5 –Most Ugani Bibi as respondent no. 5(a) (since the second proposed legal representative –Nizamuddin Mian is already party to this appeal to this appeal being the respondent no.4), the only five legal representatives of the deceased respondent no.14 – Kuleshwar Singh as 14(a) to 14(e) and the only two legal representatives deceased respondent no.17 –Rajendra Singh as 17(a) & 17(b) whose names, parentage and addresses have been mentioned in paragraph nos. 9, 10, 11 & 12 respectively of the interlocutory application no. 5216 of 2020 is allowed, the appellants will be highly prejudiced.

Considering the 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 only five legal representatives of the deceased respondent no.1 –Jahur Mian as respondent no.1(a) to 1(e), the only one legal representatives deceased respondent no.5 –Most Ugani Bibi as respondent no. 5(a) (since the second proposed legal representative –Nizamuddin Mian is already party to this appeal to this appeal being the respondent no.4), the only five legal representatives of the deceased respondent no.14 – Kuleshwar Singh as 14(a) to 14(e) and the only two legal representatives deceased respondent no.17 –Rajendra Singh as 17(a) & 17(b) whose names, parentage and addresses have been mentioned in paragraph nos. 9, 10, 11 & 12 respectively of the interlocutory application no. 5216 of 2020 is allowed.

Registry is directed to incorporate the names, parentage and addresses of the said only five legal representatives of the deceased respondent no.1 –Jahur Mian as respondent no.1(a) to 1(e), the only one legal representatives deceased respondent no.5 –Most Ugani Bibi

as respondent no. 5(a) (since the second proposed legal representative -Nizamuddin Mian is already party to this appeal to this appeal being the respondent no.4), the only five legal representatives of the deceased respondent no.14 -Kuleshwar Singh as 14(a) to 14(e) and the only two legal representatives deceased respondent no.17 -Rajendra Singh as 17(a) & 17(b) whose names, parentage and addresses have been mentioned in paragraph nos. 9, 10, 11 & 12 respectively of the interlocutory application no. 5216 of 2020 in the cause title of the appeal memo with red ink and mention the word "Dead" against the name of the deceased respondent no.1 -Jahur Mian, deceased respondent no.5 -Most Ugani Bibi, deceased respondent no.14 - Kuleshwar Singh and deceased respondent no.17 -Rajendra Singh.

Both the interlocutory applications are disposed of accordingly.

(Anil Kumar Choudhary, J.)

I.A. No.2286 of 2021

Heard the parties.

Learned counsel for the appellants submits that this interlocutory application has been filed with a prayer to substitute the legal representatives of the deceased respondent no.16 -Basant Singh who died on 29.01.2021 leaving behind his only seven legal representatives whose names, parentage and addresses have been mentioned in para-9 of this instant interlocutory application. It is next submitted by the learned counsel for the appellants that this petition for substitution is within time. It is further submitted that the appellants have very good grounds to agitate in this appeal and unless the prayer for substitution of the only seven legal representatives of the deceased respondent no.16 -Basant Singh as respondent nos. 16(a) to 16(g) is allowed, the appellants will be highly prejudiced.

Considering the aforesaid facts and circumstances of the case, the prayer to substitute the only seven legal representatives of the deceased respondent no.16 -Basant Singh as respondent nos. 16(a) to 16(g) whose names, parentage and addresses have been mentioned in

paragraph no. 9 of the instant interlocutory application is allowed.

Registry is directed to incorporate the names, parentage and addresses of the said legal representatives of the deceased respondent no.16 –Basant Singh as respondent nos. 16(a) to 16(g) in the cause title of the appeal memo with red ink and mention the word 'Dead' against the name of the said deceased respondent no.16 –Basant Singh.

This interlocutory application is disposed of accordingly.

(Anil Kumar Choudhary, J.)

S.A. No.178 of 2009

The appellants are directed to file requisites for service of notice on the respondent nos. 1(a) to 1(e), 5(a), 12(a) to 12(e), 14(a) to 14(e), 16(a) to 16(g) and 17(a) & 17 (b) by registered post with A/D as well as under ordinary process within three 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(e), 5(a), 12(a) to 12(e), 14(a) to 14(e), 16(a) to 16(g) and 17(a) & 17 (b).