

IN THE HIGH COURT OF JHARKHAND AT RANCHI
SA No. 368 of 2004

Saraswati Devi & Ors.	...	Appellants
	Versus	
Tohan Baraik & Ors.	...	Respondent

Coram: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellants	: Mr. Yashvardhan , Adv. Mr. V.K.Prasad , Adv.
For the Respondents	: Mr. Binod Singh, Adv.

18 / 03.10.2024

I.A. no. 9594 of 2023 with 9592 of 2023

Heard the parties.

Learned counsel for the appellant submits that the Interlocutory Application no. 9594 of 2023 has been filed on behalf of the legal representatives of the deceased appellant no. 3 with a prayer to substitute the legal representatives of the deceased appellant no. 3- Akhileshwar Mishra who died on 10.04.2016 leaving behind his only 05 legal representatives whose names, addresses and parentage has been mentioned at sl. no. (ii) to (vi) in paragraph 5 of the interlocutory application.

Learned counsel, Mr. V. K. Prasad has filed power on behalf of the only 05 surviving legal representatives of the deceased appellant no. 3.

It is next submitted that the Interlocutory Application no. 9592 of 2023 has been filed with a prayer to condone the delay in filing the petition for substitution and setting aside the abatement of the appeal in respect of the deceased appellant no. 3. It is next submitted that the appellant no. 1 used to look after the case but he died on 11.01.2014 and the legal representatives of the deceased appellant no. 3 were not aware about the pendency of the case and by the time, they could not know about the pendency of the case, the delay had already been occurred. It is next submitted that the appellants

have very good grounds to agitate in this appeal and the delay caused is neither deliberate nor intentional and unless the delay in filing the petition for substitution of the only 05 legal representatives of the deceased appellant no. 3 is condoned, the abatement of the appeal in respect of the deceased appellant no. 3 if any, is set aside and the prayer for substitution of the only 05 surviving legal representatives of the deceased appellant no. 3, whose names, addresses and parentage has been mentioned at sl. no. (ii) to (vi) in paragraph 5 of the interlocutory application no. 9594 of 2023, 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, the abatement of the appeal in respect of the deceased appellant no. 3 if any, is set aside and the prayer to substitute the only 05 legal representatives of the deceased appellant no. 3 as appellant nos. 3 (a) to 3 (e) whose names, addresses and parentage has been mentioned at sl. no. (ii) to (vi) in paragraph 5 of the interlocutory application no. 9594 of 2023 of the interlocutory application, is allowed.

Registry is directed to incorporate the names, parentage and addresses of the only 05 legal representatives of the deceased appellant no. 3 as appellant nos. 3 (a) to 3 (e) 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 deceased appellant no. 3 in the cause title of the appeal memo.

These interlocutory applications are disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

I.A. no. 9593 of 2023 with 9590 of 2023

Learned counsel for the appellant submits that the Interlocutory Application no. 9593 of 2023 has been filed with a prayer to substitute the legal representatives of the deceased

appellant no. 2- Bindeshwar Mishra who died on 29.01.2023 leaving behind his only 08 legal representatives whose names, addresses and parentage has been mentioned in paragraph 4 of the interlocutory application.

Learned counsel, Mr. V. K. Prasad has filed power on behalf of the only 08 legal representatives of the deceased appellant no. 2.

It is next submitted that the Interlocutory Application no. 9590 of 2023 has been filed with a prayer to condone the delay in filing the petition for substitution and setting aside the abatement of the appeal in respect of the deceased appellant no. 2. It is next submitted that the appellant no. 1 used to look after the case but he died on 11.01.2014 and the legal representatives of the deceased appellant no. 2 were not aware about the pendency of the case and by the time, they could not know about the pendency of the case, the delay had already been occurred. It is next submitted that the appellants have very good grounds to agitate in this appeal and the delay caused is neither deliberate nor intentional and unless the delay in filing the petition for substitution of the only 08 legal representatives of the deceased appellant no. 2 is condoned, the abatement of the appeal in respect of the deceased appellant no. 2 if any, is set aside and the prayer for substitution of the only 08 legal representatives of the deceased appellant no. 2 whose names, addresses and parentage has been mentioned in paragraph 4 of the interlocutory application no. 9593 of 2023, 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, the abatement of the appeal in respect of the deceased appellant no. 2 if any, is set aside and the prayer to substitute the only 08 legal representatives of the deceased appellant no. 2 as appellant nos. 2 (a) to 2 (h) whose names, addresses and parentage have been mentioned in paragraph

4 of the interlocutory application no. 9593 of 2023 of the interlocutory application, is allowed.

Registry is directed to incorporate the name of the only 08 legal representatives of the deceased appellant no. 2 as appellant nos. 2 (a) to 2 (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 deceased appellant no. 2 in the cause title of the appeal memo.

These interlocutory applications are disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

I.A. No. 9376 of 2023

Learned counsel for the appellant does not press this interlocutory application.

Accordingly, this interlocutory application stands rejected as not pressed.

(ANIL KUMAR CHOUDHARY, J.)

I.A. No. 9591 of 2023

Learned counsel for the appellant submits that this Interlocutory Application has been filed with a prayer to accept the death certificate of the appellant no. 1.

Perusal of the record reveals that vide order dated 18.02.2021, the deceased appellant no. 1 has already been substituted by his legal representatives, hence, this petition being informative in nature, keep the same in the record.

This interlocutory application is disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

SA No. 368 of 2004

Perusal of the record reveals that vide order dated 14.12.2022, the prayer for time was allowed to the appellants subject to deposit of Rs. 1,000/- with the JHALSA.

Learned counsel for the appellants again prays for time to advance argument on the merits of the appeal.

Prayer for time is allowed subject to deposit of Rs. 2,000/- by the appellants with the Jharkhand State Legal Services Authority (JHALSA) within four weeks from the date of this order, failing which, this appeal shall stand dismissed without further reference to the Bench.

In case, the appellants file the proof of deposit of Rs. 2,000/- with the Jharkhand State Legal Services Authority (JHALSA) within four weeks from the date of this order, the Registry is directed to list this appeal after eight weeks.

(ANIL KUMAR CHOUDHARY, J.)

Smita/-