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SLP(C)No. 11267 OF 2001
ITEM No.7

Court No. 9

SECTION XVII
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.11267/2001

(From the judgement and order dated 24/04/2001 in SA 52/97
of The HIGH COURT OF PATNA)

YOGENDRA SAH

Petitioner (s)

VERSUS

GAURI SHANKAR SAH (D) BY LRS. & ORS.

Respondent (s)

(With Appln(s). for permission to place addl. documents on record
and providing additional evidence and with prayer for interim relief)
(For Final Disposal)

Date : 30/10/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE R.P. SETHI

For Petitioner (s)

Mr.Gourav Agarwal,Adv.,
Mr.Prashant Kumar,Adv.

For Respondent (s)

Mr.Akhilesh Kumar Pandey,Adv.,
Mr.Ashok Kumar Pandey,Adv.

UPON hearing counsel the Court made the following

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Leave granted.

Heard the learned counsel for the parties.

Impugned order passed by the High Court is set
aside. Application filed by the appellant before the High
Court for bringing the heirs of the deceased respondent on
record is granted. The appeal is allowed with no order as
to costs. High Court to decide the appeal on merits in
accordance with law.

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(Vijay Kumar Sharma)
Court Master

(K.K Chadha)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@
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YOGENDRA SAH

Appellant

Versus

GAURI SHANKAR SAH (DEAD) BY LRS & ORS.

Respondents

O R D E R@@
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Leave granted.

Heard the learned counsel for the parties.

It appears that the High Court has increased the workload by not condoning the delay of 2/3 days in filing I.A.No.1935/2001 for substituting the legal heirs of deceased respondent No.1 who died on 15.1.2001. The period of 90 days expired on 15.4.2001 and the application for bringing the heirs of the deceased respondent No.1 was filed on 17.4.2001. The High Court arrived at the conclusion that as the appellant has not filed any application for condonation of delay or for setting aside abatement which took place on 15.4.2001, the appeal as a whole was dismissed even without considering the relevant aspect that against other

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respondents appeal may not abate. It has been pointed out by the learned counsel for the appellant that the learned counsel who appeared before the High Court had made a prayer that he may be given some time to file the application for condonation of delay. That prayer was not considered by the High Court by observing that no prayer has been made for setting aside abatement or for condonation of delay in the filing the application under Order XXII Rule 4 CPC.

In our view, the impugned order passed by the High Court cannot be sustained and is, therefore, set aside. Application filed by the appellant before the High Court for bringing the heirs of the deceased respondent on record is granted. The appeal is allowed with no order as to costs. High Court to decide the appeal on merits in accordance with law.

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.....J.
(M.B. Shah)

.....J.
(R.P. Sethi)

New Delhi,

October 30, 2001