

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arb. Appeal. No.13 of 2007

The State of Jharkhand through the Deputy Commissioner,
Hazaribagh, P.O., P.S. & District -Hazaribagh & Ors.

... Appellants

Versus

Hari Lal, S/o -Late Fudan Mul, resident of Gandhi Nagar,
Matwari, P.O., P.S. & District -Hazaribagh.

... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellants : Mr. Sachin Kumar, A.A.G -II

For the Respondent : Mr. Kundan Kumar Ambastha, Advocate

Order No.10 Dated- 25.06.2020

I.A. No.8215 of 2019

This interlocutory application has been filed on behalf of the only five legal representatives of the sole deceased respondent -Hari Lal who died on 24.05.2011 with a prayer to dismiss the appeal as the appeal has abated.

It is submitted by the learned counsel for the appellants that the appellants have already filed interlocutory application for substitution of the only five legal representatives of the sole deceased respondent and the counsel of the respondent did not intimate this Court as required under Order 22, Rule 10A of the Code of Civil Procedure about the death of the sole deceased respondent on any day prior to 28.02.2019. Hence, it is submitted that the appeal ought not be dismissed as abated without hearing the petition filed by the appellants for substitution of the only five legal representatives of the sole deceased respondent.

Considering the aforesaid facts, this Court is of the considered view that it will not be proper to dismiss the appeal being abated without considering the interlocutory applications filed by the appellants, for condonation of delay in filing the substitution petition, setting aside the abatement, if any, and the interlocutory application for substitution of the only five legal

representatives of the sole deceased respondent – Hari Lal.

Accordingly, in view of filing of the interlocutory application nos. 8744 of 2019 & 8745 of 2019 on behalf of the appellants, this interlocutory application being without any merit, is dismissed.

(Anil Kumar Choudhary, J.)

I.A. No.8744 of 2019 & I.A. No. 8745 of 2019

It is submitted by the learned counsel for the appellants that interlocutory application no. 8744 of 2019 has been filed with a prayer to substitute the legal representatives of the sole deceased respondent –Hari Lal who has died on 24.05.2011 and has survived by his only five legal representatives whose name, parentage and address has been mentioned in paragraph no.3 of the instant interlocutory application.

It is further submitted by the learned counsel for the appellants that interlocutory application no. 8745 of 2019 has been filed with a prayer to set aside the abatement, if any, and condone the delay in filing the petition for substitution of the legal heirs of the sole deceased respondent -Hari Lal.

It is next submitted by the learned counsel for the appellants-petitioners that the appellants-petitioners were not aware about the death of the sole deceased respondent and only upon receiving the interlocutory application filed on behalf of the sole deceased respondent on 28.08.2019, the appellants came to know about the death of the sole deceased respondent –Hari Lal and immediately they have taken steps for substitution of the only legal representatives of the sole deceased respondent and these interlocutory applications have been filed on 12.09.2019. Hence, it is submitted that the delay in filing the petition for substitution vide interlocutory application no. 8744 of 2019 be condoned, abatement if any be set aside and the said only five legal representatives of the sole deceased respondent –Hari Lal be substituted as respondent nos. 1 (a) to 1 (e).

Learned counsel for the proposed legal representatives of the sole deceased respondent do not dispute that the only five legal representatives whose names, parentage and address has been mentioned in paragraph no.3 of the interlocutory applications are the only legal representatives of the sole deceased respondent but he submits that delay has been caused in filing the substitution petition but do not dispute that the State has no knowledge about the death of the sole deceased respondent on any day prior to 28.08.2019 when the learned counsel for the legal representatives of the deceased respondent-who was also appearing for the sole deceased respondent, informed this Court about the death of the said sole respondent.

Considering the aforesaid facts and circumstances of the case, the delay in filing the petition for substitution is condoned, the abatement, if any, is set aside and the prayer to substitute the only five legal representatives of the sole deceased respondent as respondent nos.1 (a) and 1 (e) is allowed.

Registry is directed to incorporate the names, parentage and addresses of the said respondent nos.1 (a) and 1 (e) in the cause title of the appeal memo in red ink.

These interlocutory applications are disposed of accordingly.

(Anil Kumar Choudhary, J.)

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Since Mr. Kundan Kumar Ambastha, Advocate, has already filed power on behalf of the said respondent nos. 1(a) to 1(e), no fresh notice is required to be issued.

With the consent of both the parties, list this appeal, one week after the lockdown period is over for hearing.

(Anil Kumar Choudhary, J.)