

IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 40 of 2024

1. Chandradeo Mishra
2. Kishori Mishra
3. Anand Mishra
4. Krishna Mishra
5. Smt. Subhadra Devi
6. Suchita Devi
7. Saraswati Devi
8. Maya Devi
9. Shankar Mishra
10. Brajkishore Mishra
11. Sanjay Mishra
12. Yasoda Devi
13. Satdeo Mishra
14. Kiran Devi
15. Ranjit Mishra
16. Mukesh Mishra
17. Amit Mishra
18. Gudia Kumari
19. Ajay Mishra
20. Kanhaiya Kumar Mishra
21. Gopal Mishra
22. Anil Kumar Mishra
23. Dinesh Kumar
24. Subham Kumar Mishra
25. Saurabh Kumar Mishra
26. Nirmala Devi
27. Indrani Devi
28. Tara Devi
29. Rubi Kumari

.....Petitioners

Versus

1. Sripati Pathak
2. Laxmi Devi
3. Sweta Salini
4. Sapana Sikha
5. Nishu Kumari
6. Ashutosh Kumar
7. Kamalpati Pathak
8. Umapati Pathak

..... Opp. Parties

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Amar Kr. Sinha, Advocate

For the Opp. Parties: Mr. Prabhash Chandra Sinha, Adv.

I. A. No. 5666 of 2024

03/19.06.2024 I.A. No. 5666 of 2024 has been filed on behalf of the petitioners under Order XXII Rule 3 and 9 and Section 151 of C.P.C. read with Section 5 of the Limitation Act, 1963 for substitution of heirs and legal representatives by condoning the delay in filing this substitution application, i.e. I.A. No. 5666 of 2024 and for grant of leave to pursue this civil miscellaneous petition on behalf of the legal heirs to be substituted.

2. Although the I.A. No. 5666 of 2024 has not been satisfactorily drafted as two separate Interlocutory Applications should have been filed, i.e. one for condonation of delay in filing the instant Interlocutory Application for substitution of the legal heirs of the Appellant No. 13 in S.A. 117 of 2015 (i.e. the connected Second Appeal), namely Jainandan Mishra, who died on 07.01.2023 and the other for grant of leave to pursue the instant Civil Miscellaneous Petition on behalf of the aforesaid substituted heirs, but considering the fact that the substituted heirs are already on record as Petitioner No.s 20 to 29 in the cause title of the instant Civil Miscellaneous Petition and the defect has not been pointed out by the Stamp Reporter, the same is

ignored for the present.

3. Heard learned counsel for the petitioners and learned counsel for the opposite parties.

4. Learned counsel for the petitioners has submitted that Appellant No. 13 of S.A. No.117 of 2015 namely Jainandan Mishra had died on 07.01.2023 leaving behind the heirs and legal representatives, whose names are mentioned at para-6 of this I. A. No. 5666 of 2024 as follows:-

(i) Kanhaiya Kumar Mishra

(ii) Gopal Mishra

(iii) Anil Kumar Mishra

(iv) Dinesh Kumar

(All sons of Late Jainandan Mishra)

(v) Subham Kumar Mishra

(vi) Saurabh Kumar Mishra

Both sons of Late Suresh Mishra (Son of Late Jainandan Mishra)

(vii) Nirmala Devi

(viii) Indrani Devi

(ix) Tara Devi

(x) Rubi Kumari

(All daughters of Late Jainandan Mishra)

5. It is submitted that the legal heirs at Sr.No. (i) to (iv) of aforesaid Para-6, namely Kanhaiya Kumar Mishra, Gopal Mishra, Anil Kumar Mishra and Dinesh Kumar respectively are sons of Late Jainandan Mishra and even one son of Jainandan Mishra, i.e. Suresh Mishra had also died and hence the legal heirs

at Sr. No. (v) and (vi) of Para-6, namely Subham Kumar Mishra and Saurabh Kumar Mishra respectively have been made the parties for substitution, who are the sons of Late Suresh Mishra, who was the son of Late Jainandan Mishra and the legal heirs at Sr.No. (vii),(viii),(ix) and (x), namely Nirmala Devi, Indrani Devi, Tara Devi, Rubi Kumari respectively are daughters of Late Jainandan Mishra.

6. Having heard learned counsel for the parties and in view of the averments at Para No. 11 to 18 of I.A. No. 5666 of 2024, prayer for condonation of delay in filing this I.A. No. 5666 of 2024 for substitution of the legal heirs of Late Jainandan Mishra is allowed and the delay is condoned and the heirs and legal representative of Late Jainandan Mishra, mentioned at Sr.No.s (i) to (xi) of Para 6 of the I.A. No. 5666 of 2024, namely Kanhaiya Kumar Mishra, Gopal Mishra, Anil Kumar Mishra, Dinesh Kumar, Subham Kumar Mishra, Saurabh Kumar Mishra, Nirmala Devi, Indrani Devi, Tara Devi and Rubi Kumari are directed to be substituted in place of Late Jainandan Mishra and to be treated as the Petitioner No.s 20 to 29 of this Civil Miscellaneous Petition and further the Leave is granted to the above named substituted legal heirs of Late Jainandan Mishra, namely Kanhaiya Kumar Mishra, Gopal Mishra, Anil Kumar Mishra, Dinesh Kumar, Subham Kumar Mishra, Saurabh Kumar Mishra, Nirmala Devi,

Indrani Devi, Tara Devi and Rubi Kumari, to pursue this C.M.P No. 40 of 2024 and they may appear by filing *Vakalatnama* in due course.

7. Thus, I.A. No. 5666 of 2024 is allowed and stands disposed of.

I. A. No. 503 of 2024

8. This Interlocutory Application has been filed on behalf of the petitioners for condoning the delay of 98 days in filing this C.M.P. No. 40 of 2024.

9. Learned counsel for the Opposite Parties raised objection.

10. Having heard learned counsel for the petitioners and in view of the averments made in paragraph 7, 8, 9, 10 and 11 of the Interlocutory Application, the delay of 98 days in filing the Civil Miscellaneous Petition is hereby condoned, subject to payment of cost of Rs. 1000/- each to O. P. No. 1 and O.P.No.2, namely Sripati Pathak and Laxmi Devi respectively, by preparing a D.D. of Rs. 1000/- each in the name of O.P.No.1 and O.P. No.2 namely Sripati Pathak and Laxmi Devi respectively within two weeks from today and the same may be handed over to the learned counsel for the opposite parties of this Civil Miscellaneous Petition.

11. Thus, I. A. No. 503 of 2024 is allowed and stands disposed of.

C.M.P No. 40 of 2024

12. This CMP has been filed under Order XLI Rule 19 of the Code of Civil Procedure on behalf of the petitioners for restoration of S. A. No. 117 of 2015 which stood dismissed on 08.09.2023 on account of non-compliance of the order dated 27.07.2023, passed by Hon'ble Mr. Justice Anil Kumar Choudhary by not depositing the cost of Rs. 1000/- with the Jharkhand State Legal Services Authority.

13. Learned counsel for the petitioners has submitted that due to inadvertence the cost of Rs. 1000/- could not be deposited by the appellants before the JHALSA within the stipulated time.

14. It has also been submitted that due to laches on the part of the counsel, the parties may not suffer and hence, the petitioners are ready to deposit the cost of Rs. 1000/- within one week from today before JHALSA and hence, the S. A. No. 117 of 2015 may be restored.

15. Learned counsel for the opposite parties has opposed the prayer.

It is submitted that there was negligence and laches on the part of the petitioners herein, i.e. the appellants in S.A. No. 117 of 2015 for not complying with the order dated 08.09.2023, passed by the Co-ordinate Bench of this Court, which resulted into dismissal of S.A. No. 117 of 2015 and therefore, this C.M.P. No. 40 of 2024 may be dismissed.

16. Having heard learned counsel for both the sides and in view of the averments made in paragraph nos. 7 to 11 of the instant Civil Miscellaneous Petition, this Court is of the view that parties may not suffer due to latches on the part of the office of the learned counsel for the petitioners.

17. Considering the facts and circumstances and in view of the averments made in Paragraph Nos. 7 to 11 of this C.M.P. No. 40 of 2024, the prayer for restoration of S. A. No. 117 of 2015 is allowed and S. A. No. 117 of 2015 is restored to its original file subject to depositing cost of Rs. 5000/- in the name of 'Advocate's Clerk Association, Welfare Fund, Jharkhand High Court' within one week from today.

18. Thus, C.M.P. No. 40 of 2024 is allowed and disposed of.

(Sanjay Prasad, J.)

s.m./Amitesh