



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Miscellaneous Application No. 135/2025
CNR: RJHC020704032025 | URN: CMAP / 195U / 2025

In

S.B. Civil First Appeal No. 11/2006



1. Syed Riyajuddin Chishti S/o Sh. Shanshuddin, Aged About 53 Years, R/o 34/355, Gaffar Building Chhota Chotik, Khadim Mohallah, Dargah Shareef, Ajmer
2. Syed Basheer S/o Sh. Shanshuddin, R/o 34/355, Gaffar Building, Chhota Chowk, Khadim Mohallah, Dargah Shareef, Ajmer

-----Petitioners

Versus

1. Chandra Prakash (Died) S/o Sh. Bhawarlal, Karta Of Joint Hindu Family Late Seth Bhawarlal Goyal, R/o House No. 20/5 Hindu Mochi Mohallah, Ajmer
2. Parsumal S/o Sh. Lalchand, R/o Shanti Nagar, Mlusal Road, Ajmer
3. Nagar Parishad, Ajmer Through Commissioner, Ajmer

-----Respondents

For Petitioner(s) : Mr. Jitendra Singh Tanwar
For Respondent(s) : Mr. Vipin Goyal (party in person)

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

05/10/2026

1. Instant miscellaneous application under Order XXII Rule 4 and 9 of CPC has been filed for setting aside abatement of order dated 17.2.2025 in CFA No. 11/2006 and for taking on record legal heirs of respondent No. 1.
2. Learned counsel for petitioners-applicant, while placing reliance upon judgment in case of **Om Prakash Gupta @**



Lalloowa (now deceased) and others versus Satish Chandra (now deceased) reported in 2025 INSC 183,

has submitted that Hon'ble Supreme Court has considered principles applicable in considering application for setting aside of abatement and same are applicable upon the facts of the present case. He further submitted that SB CFA No. 11/2006 was filed by the appellants (present applicants) aggrieved from judgment and decree dated 07.12.2005 in Civil Suit No. 62/2000 (394/2000) passed by learned Additional District Judge No. 2, Ajmer, and during pendency of first appeal it has come to the notice that sole respondent-plaintiff Chandra Prakash has expired on 07.10.2007, but no information was supplied to the appellants under Order XXII Rule 10A of CPC, which casts an obligation upon counsel of respondent to submit the details. He also submitted that in absence of details filed under Order XXII Rule 10A of CPC, the appellants cannot file an application for substitution of legal representatives of deceased respondent No. 1-plaintiff. He also submitted that first appeal has been filed against final judgment and decree, therefore, the matter has to be considered on the basis of rights of the appellants, and not on technicalities. He also submitted that judgment clearly indicates that the Court has to adopt a liberal and justice-oriented approach towards the procedural requirement, and in the instant case counsel for respondent No. 1 has not fulfilled his obligation to provide details to the counsel of appellants; therefore, they have not taken any action within time.





3. Aforesaid contentions were opposed by party in person appearing on behalf of legal heirs of respondent-deceased No. 1, and he submitted that the order has been passed after considering the details, and appellants are aware about death of respondent No.1.
4. Heard learned counsel for the appellants and party appearing in person and perused the material placed on record along with judgment as referred by learned counsel for appellants.
5. Aggrieved from judgment and decree dated 07.12.2005 in Civil Suit No. 62/2000 (394/2000) passed by learned Additional District Judge No. 2, Ajmer, a first appeal is preferred by defendant No. 1 and 2. Appeal was admitted on 06.01.2006 and a stay order was passed on 06.01.2006 and the same was confirmed on 27.04.2007.
6. During pendency of said first appeal, an application No. 1/2024 dated 21.09.2024 was filed by Vipin Goyal. A copy of the application was provided to counsel for appellants on 11.09.2024 (before filing of the application). On 13.01.2025, the matter was listed before a coordinate Bench, wherein the counsel appearing on behalf of appellants sought time to file reply to the application, and the matter was listed thereafter on 17.02.2025.
7. On 17.02.2025, this Court has passed the following order:
 1. Application No.1/2024 filed for abatement of appeal as contesting respondent-plaintiff Chandra Prakash expired on 07.10.2007.
 2. Learned counsel appearing for respondent(s) submits that the appellants were in knowledge since 2008 about death of Chandra Prakash and



they have already prayed for substitution of legal heirs of Chandra Prakash before the trial Court wherein other proceedings are pending. She submits that despite knowledge since 2008, no efforts were made by the appellants to substitute legal heirs of contesting respondent No.1-plaintiff.

3. Learned counsel for the appellants requests for time and he submits that time be granted to him so that he can take steps.

4. Having considered the submissions of learned counsels for the parties and on perusal of material placed on record, I am of the considered view that when parties are in litigation in several proceedings and having knowledge about death of any of the party then the duty lies upon them to file application for substitution in all pending proceedings whether it is before the trial Court or Appellate Court.

5. Herein, the instant application is filed on 21.09.2024 but for the purpose of listing, this case was listed on 16.10.2024 after filing of instant application. Thereafter on 13.01.2025, the counsel for the appellant sought time to file reply to the aforesaid application.

6. Now after more than 16 years, no efforts were made for substitution of LR's of deceased respondent (sole plaintiff). Hence, the appeal stands abated but same is liable to be dismissed in abatement.

7. In view of aforesaid the appeal stands dismissed in abatement.

8. Misc. application also stands disposed of.

8. The material referred in application clearly indicates that issue about death of deceased respondent No. 1-plaintiff,





was within knowledge of appellants, as it has been asserted by the counsel for respondent No. 1 that appellants were aware since 2008 about death of sole respondent-plaintiff, as other proceedings between the parties are also pending. The parties are in litigation in several matters; therefore, they are aware and having knowledge about the death of plaintiff (respondent).

9. In case of **Om Prakash Gupta (supra)**, Hon'ble Supreme Court has considered judgment in case of **Perumon Bhagvathy Devaswom Vs. Bhargavi Amma (2008) 8 SCC 321**, and observed as under:

"13. The principles applicable in considering applications for setting aside abatement may thus be summarised as follows:

(i) The words 'sufficient cause for not making the application within the period of limitation' should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it



will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal." (emphasis supplied in original) The aforesaid passage is followed by other instructive passages too on special factors which have a bearing on what





constitutes "sufficient cause", with reference to delay in applications for setting aside abatement and bringing the legal representatives on record. To the extent relevant for decisions on these two appeals, the same are extracted hereunder:

"15. The first is whether the appeal is pending in a court where regular and periodical dates of hearing are fixed. There is a significant difference between an appeal pending in a subordinate court and an appeal pending in a High Court. In lower courts, dates of hearing are periodically fixed and a party or his counsel is expected to appear on those dates and keep track of the case. The process is known as 'adjournment of hearing'. ...

16. In contrast, when an appeal is pending in a High Court, dates of hearing are not fixed periodically. Once the appeal is admitted, it virtually goes into storage and is listed before the Court only when it is ripe for hearing or when some application seeking an interim direction is filed. It is common for appeals pending in High Courts not to be listed at all for several years.

(In some courts where there is a huge pendency, the non-hearing period may be as much as ten years or even more.) When the appeal is admitted by the High Court, the counsel inform the parties that they will get in touch as and when the case is listed for hearing. There is nothing the appellant is required to do during the period between admission of the appeal and listing of the appeal for arguments (except filing paper books or depositing the charges for preparation of paper books wherever necessary). The High Courts are overloaded with appeals and the litigant is in no way responsible for non-listing for several years.





There is no need for the appellant to keep track whether the respondent is dead or alive by periodical enquiries during the long period between admission and listing for hearing. When an appeal is so kept pending in suspended animation for a large number of years in the High Court without any date being fixed for hearing, there is no likelihood of the appellant becoming aware of the death of the respondent, unless both lived in the immediate vicinity or were related or the court issues a notice to him informing the death of the respondent.

17. The second circumstance is whether the counsel for the deceased respondent or the legal representative of the deceased respondent notified the court about the death and whether the court gave notice of such death to the appellant. Rule 10-A of Order 22 casts a duty on the counsel for the respondent to inform the court about the death of such respondent whenever he comes to know about it. When the death is reported and recorded in the order-sheet/proceedings and the appellant is notified, the appellant has knowledge of the death and there is a duty on the part of the appellant to take steps to bring the legal representative of the deceased on record, in place of the deceased. The need for diligence commences from the date of such knowledge. If the appellant pleads ignorance even after the court notifies him about the death of the respondent that may be an indication of negligence or want of diligence.

18. The third circumstance is whether there is any material to contradict the claim of the appellant, if he categorically states that he was unaware of the death of the respondent. In the absence of any material, the



court would accept his claim that he was not aware of the death.

19. Thus it can safely be concluded that if the following three conditions exist, the courts will usually condone the delay, and set aside the abatement (even though the period of delay is considerable and a valuable right might have accrued to the opposite party—LRs of the deceased—on account of the abatement):

(i) The respondent had died during the period when the appeal had been pending without any hearing dates being fixed;

(ii) Neither the counsel for the deceased respondent nor the legal representatives of the deceased respondent had reported the death of the respondent to the court and the court has not given notice of such death to the appellant;

(iii) The appellant avers that he was unaware of the death of the respondent and there is no material to doubt or contradict his claim.

10. After considering the procedural part of the litigation and sufficient cause, Hon'ble Supreme Court has observed the manner of finding is not in accordance with Rule 10A, as duty is casted upon the counsel to intimate the Court about the death of such party. No doubt that the Court should adopt a liberal and justice-oriented approach towards procedural requirement.

11. In the instant case, when the parties are already in litigation in several other matters and they were aware about the death of sole plaintiff, then the substitution process has to



be adopted in all litigation/proceedings. The appellants have not filed anything on record to show that they were not aware about death of respondent.

12. In the instant case, despite filing application No. 1/2024 and giving an opportunity to the counsel for appellants, no efforts were made till 17.02.2025, and ultimately the appeal was abated on 17.02.2025. If the counsel for appellant has not informed after receiving a copy of application No.01/2024, then it is again fault of appellant.
13. The sole respondent died on 07.10.2007 and a copy of application was supplied on 11.09.2024 and on 13.01.2025 the time was sought from the Court and ultimately on 17.02.2025 the matter was dismissed in abatement. The entire timeline indicates that appellants have not taken due care in bringing LRs on record, and this indicate not only the negligence but the clear disregard to the procedure provided under Order XXII CPC and Limitation Act. Therefore, there is no sufficient ground to take any liberal approach in the matter.
14. In view of discussion made hereinabove, the applications for setting aside of abatement, condonation of delay and substitution of legal heirs of respondent No. 1 are hereby dismissed.
15. Misc. application stands disposed of.
16. No order as to costs.

(ASHOK KUMAR JAIN),J

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