



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 3rd OF FEBRUARY, 2026

MISC. PETITION No. 429 of 2021

SMT. CHANDA KACHER AND OTHERS

Versus

KAMLESH KACHER

.....
Appearance:

Shri Arvind Kumar Shrivastava - Advocate for petitioners.

Shri Quazi Fakhruddin - Advocate for respondent.

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ORDER

The present petition has been filed challenging the order dated 08.01.2021 passed by the appellate Court, whereby the appellate Court has set aside the order dated 26.10.2015 passed by the trial Court, by which the trial Court had rejected application under Order 22 Rule 4 CPC for substitution of legal representatives of sole defendant and consequently dismissed the suit as abated and consigned the file to the record room. In appeal, the appellate Court vide impugned order dated 08.01.2021, has allowed the application under Order 22 Rule 4 read with Rule 9 CPC and permitted substitution of legal representatives of sole defendant.

2. The necessary facts for the purpose of adjudication of the present petition are that a suit had been filed by the original respondent who was the original plaintiff against the original defendant. The legal representatives of original defendant are in this petition before this Court. The original plaintiff



and original defendant were step-mother and step-son respectively and the suit was filed in the year 1999, which was for eviction of the original defendant who was the step-son of the original plaintiff. During the pendency of this petition, the original plaintiff has also died and is now represented by her son.

3. The original defendant expired on 22.06.2014 and an application for substitution of legal representatives was filed on 29.06.2015 which was almost one year after death of the original defendant and no separate application under Section 5 of the Limitation Act was filed along with the said application. Therefore, the trial Court had rejected the said application on the ground that it is barred by limitation because 150 days after date of death of the original defendant, application under Section 5 of the Limitation Act had to be filed which has not been filed. Even otherwise, the application was not found to have disclosed sufficient reason for the delay caused in filing of application for substitution and on these grounds, the substitution was rejected by the trial Court and the suit was dismissed as abated. Against that order, the original plaintiff approached the appellate Court and the appellate Court has set aside the order and directed substitution of legal representatives of original defendant.

4. The learned counsel for the petitioners, who are LR's of original defendant, has vehemently argued before this Court that no application for substitution of legal representatives can be filed in a suit after 90 days because the suit stands abated and, therefore, the application has to be filed as a separate MJC. It was further argued that the abatement is automatic after



90 days and even the application for setting aside abatement has to be filed within further 60 days and thereafter application for condonation of delay has to be filed. Therefore, it was the duty of the trial Court to have consigned the file to the Record Room after 90 days or as soon as the factum of death of deceased defendant came to notice of the trial Court which was after 90 days of death of deceased defendant and should have relegated the plaintiff to file application for setting aside abatement and substitution as separate proceedings in MJC.

5. It is further argued that no cogent reasons were assigned for condonation of delay because though the counsel for the defendants had not discharged his obligation under Order 22 Rule 10A CPC by intimating the factum of death of deceased defendant but the deceased defendant and the original plaintiff were step-son and step-mother and it could not be inferred that one of the parties did not know the fact of death of other party more so when the address of both the parties was one and the same and both the parties are occupying different portions of the same property. It is argued that it was not the case of unrelated parties and even in the application under Order 22 Rule 4 CPC, nothing has been pleaded by the original plaintiff which inspire confidence to condone the delay in moving application for substitution.

6 . *Per contra*, it is vehemently argued by counsel for the respondent/plaintiff that the application has been rightly allowed by the appellate Court. It is argued that though separate application under Section 5 of Limitation Act was not filed, but sufficient explanation was given for delay in the application under Order 22 Rule 4 read with Rule 9 CPC. It was



argued that though in the application captioned as one under Order 22 Rule 4 read with Rule 9 CPC, though prayer might not have been made to set aside abatement but once the prayer was made to substitute the legal representatives, therefore, the prayer to condone the delay and to set aside abatement was implicit in that very application and the appellate Court has rightly taken a justice orientated view of the matter and has not taken a strict technical view of the matter and, therefore, this Court should confirm the impugned order passed by the appellate Court and the suit which is pending since the year 1999 should now be brought back to life and allowed to proceed on its merits.

7. It is further argued that once the suit itself was pending and had not been dismissed as abated, therefore, the application for setting aside abatement and for substitution of legal representatives would be filed in that suit itself and not as a separate MJC.

8. Heard.

9. In the present case, admittedly, the original defendant had died on 22.06.2014 and the application for substitution was filed on 29.06.2015. So far as the argument of learned counsel for the petitioners that as soon as the fact of death of deceased defendant came to notice of the Court by filing application under Order 22 Rule 4 CPC is concerned, then the trial Court ought to have rejected the suit as abated and registered the application as separate MJC is concerned, the said argument is utterly misconceived and is not contemplated anywhere in CPC.

10. Once the suit is still pending and the file has not been disposed of by



dismissing the suit as abated, then any application for setting aside abatement and substitution of legal representatives would be filed in that proceeding only and cannot be filed as a separate proceeding. There is no provision in the Code of Civil Procedure that such an application has to be filed as a separate proceeding nor such a course of action is contemplated anywhere in the *Madhya Pradesh Civil Court Rules 1961*. The classification of records that are prepared as separate cases are laid down in Rules 292, 293, 294, 295 and 296. Any application under Order 22 Rule 9 CPC is not contemplated to be registered or maintained as separate file/record under these rules.

11. As per Rule 340, classifications of cases are broadly grouped as:

- (i) suits,
- (ii) miscellaneous judicial cases,
- (iii) execution cases,
- (iv) insolvency petitions,
- (v) regular appeals,
- (vi) miscellaneous appeals,
- (vii) miscellaneous cases.

The applications for setting aside abatement cannot be grouped in any of these class of cases. Miscellaneous Judicial cases are enumerated under Rule 372, and that has only certain specified class/nature of cases, and that does include application under Order 22 Rule 9 CPC, i.e. application for setting aside abatement, as contained in Rule 372 (4). However, separate order-sheet is not required to be opened for such applications, in view of Rule 319, that mentions that for which class of cases, separate order-sheets



are to be opened. For Miscellaneous Judicial cases, separate order sheet shall be opened only for cases Miscellaneous Judicial cases under items (5), (6), (8), (9), (10), (11), (17), (18), (22), (24), (34) or (42) of Rule 372.

12. As per note appended to Rule 295, the list of miscellaneous judicial cases contained in Rule 372 is compiled for purposes of registration and not of classification. Miscellaneous judicial cases not included in the preceding rules will form part of the parent record and the papers forming them will not be collected separately except in the case of those miscellaneous judicial cases for which a separate order-sheet is prescribed. It is also clarified therein that the orders governing these cases will be found in Rule 319. Therefore, it becomes crystal clear that the application for setting aside abatement is not to be opened as a separate file and as a separate case. It will be dealt with in the main case itself. Hence, in the present case, the application has rightly been entertained in the main file of the suit itself and that was the only lawful course for the trial Court to do, which the trial Court did. Only if the case had been disposed of as abated *before* filing of application under Order 22 Rule 4 or 9 CPC, then it could have been registered as different MJC.

13. So far as the contention that though the application was captioned as one under Order 22 Rule 4 and 9 CPC but no prayer was made to set aside the abatement is concerned, the said issue has been considered time and again by the Hon'ble Supreme Court and most recently in the case of **Om Prakash Gupta alias Lalloowa (Now Deceased) and others vs. Satish Chandra (Now Deceased)**, reported in 2025 SCC OnLine SC 291, wherein in paragraph 23 the Hon'ble Supreme Court has held that when an application



praying for substitution is filed, then even assuming that it does not have an express prayer for setting aside the abatement, such prayer should be read as inherent in the prayer for substitution, in the interest of justice. The Supreme Court referred to the earlier judgement in the case of **Mithailal Dalsangar Singh and others vs. Annabai Devram Kini and others**, reported in (2003) 10 SCC 691.

14. In view of the above, the mere fact that the application was not captioned as one under Section 5 of the Limitation Act and the prayer in the application was in terms of Order 22 Rule 4 and not in terms of Order 22 Rule 9 CPC, pales into insignificance and this argument of the learned counsel for the petitioners, is discarded.

15. So far as the grounds raised by the learned counsel for the petitioners that no benefit of Order 22 Rule 10A CPC can be taken in the present case because the parties were step-mother and step-son and resident of the same property though in different parts of the same property, therefore, it could not be inferred that the plaintiff did not get knowledge of death of defendant is concerned, it cannot be denied that the plaintiff must have been aware of the death of defendant which took place on 22.06.2014 and the benefit of Order 22 Rule 10A CPC may not be strictly taken by the plaintiff in this case.

16. However, the appellate Court has duly considered the position in its order that a Second Appeal No.1062/2023 is pending between the same parties in which the original defendant is the appellant before this Court and in that appeal, the legal representatives of the original defendant moved an



application for substitution only on 27.04.2015 and this application was filed by the legal representatives of the deceased defendant himself and this Court allowed the application for substitution and also set aside the abatement on 16.06.2015 in SA No.1062/2003. Shortly thereafter, when the application for substitution was filed in the pending Second Appeal before this Court, then the plaintiff who is respondent in the second appeal, filed application for substitution of same legal representatives in the civil suit on 29.06.2015 and the appellate Court has duly considered the position that the proceedings of the civil suit were lying stayed since 24.07.2000 till 15.05.2015 and only formal dates were being fixed in the suit and it was only when on 15.05.2015 when the order of the High Court dated 21.04.2015 was filed before the trial Court, then the trial Court proceeded ahead in the suit and directed the plaintiff to lead evidence.

17. In view of the aforesaid facts that the trial in the suit was stayed and the trial got started in terms of order dated 21.04.2015 passed by the High Court in some other case which was filed before the trial Court on 15.05.2015, therefore, the plaintiff having filed an application on 29.06.2015, cannot be stated to have filed an application with such delay that it would lead to dismissal of the suit as abated.

18. In the case of **Union of India vs. Ram Charan (Deceased)** by LRs. [AIR 1964 SC 215], the Supreme Court considered the need to construe delay liberally in cases of abatement by noting that the limitation of 90 days might have been laid down in view of time gap between successive dates of hearing in a civil suit. It was held as under:-

“The provisions of the Code are with a view to advance the cause of justice.



Of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. It is true that it is no duty of the appellant to make regular enquiries from time to time about the health or existing of the respondent.”

19. Therefore, this Court does not find any error in the order passed by the appellate Court in setting aside the order of dismissal of the suit as abated and allowing the application for substitution of legal representatives of deceased defendant by setting aside abatement.

20. Consequently, the petition fails and is **dismissed**.

(VIVEK JAIN)
JUDGE