



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 1st OF AUGUST, 2025

SECOND APPEAL No. 469 of 2006

SMT.RAJWAI

Versus

UDAY PRATAP SINGH AND OTHERS

.....
Appearance:

Shri Rohit Bansal - Advocate for the appellant.

Shri Yashwant Rao Dixit- Advocate for the respondent No.1.
.....

ORDER

Heard on I.A.Nos.5624/2025, 5625/2025 and 5626/2025. These are applications for condonation of delay in filing an application for setting aside abatement, for setting aside abatement as well as for substitution of legal representatives of sole appellant- Rajbai.

2. According to these applications, sole appellant has expired on 14/02/2014. Appeal was being prosecuted by Rajbai through her power of attorney holder Laxmichand Soni. It is the case of proposed legal representative of sole appellant that Rajbai had executed a Will in favour of Laxmichand Soni and, therefore, by virtue of Will, Laxmichand Soni who was initially holder of power of attorney has now become legal representative of Rajbai.

3. In the application filed under Order 22 Rule 9 of C.P.C., i.e., I.A.No.5625/2025, it is mentioned that appeal was admitted on 16/04/2015



and thereafter, due to unavoidable circumstance, appeal could not come in the cause list, due to which it was dismissed for want of prosecution.

4. This Court is not dealing with the question as to whether dismissal of appeal for want of prosecution is to be set aside or not? By these applications, this Court is dealing with the question as to whether appeal had abated and whether, a sufficient cause has been shown to condone the delay in filing an application for setting aside abatement and for setting aside abatement or not?

5. According to appellant, sole appellant Rajbai had expired on 14/02/2014. Thereafter, the case was listed on 16/04/2015, 08/07/2015, 03/08/2015, 23/03/2023, 02/05/2023, 23/06/2023, 08/08/2023, 06/09/2023, 15/09/2023, 19/10/2023, 29/11/2023, 11/01/2024, 13/02/2024, 01/03/2024, 06/09/2024, 18/09/2024 and 27/09/2024. It is true that on certain days, the case could not reach, but the crux of the matter is that the case was listed and counsel for appellant must have noticed that case.

6. Be that whatever it may be.

7. The law provides that in case if legal representatives of appellant are not brought on record within a period of 90 days, then the suit/appeal would automatically stand abated. Thereafter, an application for setting aside abatement has to be filed within a period of 60 days and in case if such an application is not filed, then an application for condonation of delay has to be filed in support of application filed under Order 22 Rule 9 of C.P.C.

8. Counsel for appellant was directed to point out any provision from C.P.C. to the effect that in case if the case is missed by counsel, then it would



be a good ground to set aside the abatement or to condone the delay in filing an application for setting aside the abatement. Counsel for appellant could not point out even a single provision from C.P.C. which makes obligatory on the part of counsel for appellant to take the personal responsibility of substituting the legal representatives of sole appellant. Under Order 22 Rule 10A of C.P.C., it is the responsibility of counsel for respondent to inform about the death of appellant, but here appellant herself had died and power of attorney holder is the beneficiary of Will, and he is seeking his substitution on the strength of power of attorney.

9. Whether counsel for appellant had missed the case in the cause list or not, is not a question to be considered by this Court in the present case.

10. The moot question for consideration is as to why power of attorney holder who was contesting the case on behalf of sole appellant Rajbai did not move an application for substitution of legal representative?

11. Since, the propounder of Will was himself the power of attorney holder and was contesting the case, therefore, the ground that power of attorney holder was not aware of the pendency of appeal is not available with the appellant.

12. Under these circumstances, a very noble idea has been invented by appellant, by which counsel for appellant is trying to take personal responsibility for not bringing the legal representative of sole appellant on record.

13. Be that whatever it may be.

14. The propounder of Will, who wants to get himself substituted in



place of appellant, was well aware of pendency of this appeal. The sole appellant had died on 14/02/2014 and no application was filed for substitution of her legal representatives. Since, the proposed legal representative himself was contesting the case, therefore, it has to be presumed that he was well aware of the nicety of law, and in spite of that, he did not move any application for his substitution as legal representative. Thus, this Court is of considered opinion that no case is made out for condonation of delay in filing an application for setting aside abatement.

15. Accordingly, I.A.No.5626/2025 is hereby rejected. As a consequence thereof, I.A.No.5625/2025 is also rejected and the abatement of appeal on account of death of sole appellant Rajbai is not set aside.

16. *Ex-consequenti*, I.A.No.5624/2025 which is an application for substitution of legal representative of the sole appellant is also hereby rejected, accordingly, the appeal is **dismissed as abated**.

(G. S. AHLUWALIA)
JUDGE

PjS/-