

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 23rd OF JUNE, 2023
MISC. PETITION No. 3226 of 2023**

BETWEEN:-

1. SULOCHANA JAIN W/O SHRI PRAKASH CHANDRA JAIN, AGED ABOUT 42 YEARS, OCCUPATION: HOUSEWIFE R/O WARDNO 8 BEOHARI DISTRICT SHAHDOL (MADHYA PRADESH)

2. PRAKASH CHANDRA JAIN S/O SHRI KASTOOR CHAND JAIN, AGED ABOUT 46 YEARS, OCCUPATION: BUSINESS WARD NO. 8 BEOHARI DISTRICT SHAHDOL (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI ANIL KUMAR DWIVEDI - ADVOCATE)

AND

1. HETRAM SHRI RAM PRATAP SINCE DEAD THROUGH LEGAL HEIRS BANTUL BAI W/O LATESHRI HETRAM, AGED ABOUT 70 YEARS, R/O VIALGE BHOGIYA TOLA BEOHARI WARD NO 1 DISTRICT SHAHDOL (MADHYA PRADESH)

2. SHANKUNTALA D/O LATE SHRI HETRAM, AGED ABOUT 50 YEARS, VILLAGE BHOGIYA TOLA BEOHARI WARD NO. 1 DISTRICT SHAHDOL (MADHYA PRADESH)

3. **SAVITRI D/O LATE SHRI HETRAM,
AGED ABOUT 44 YEARS, VILLAGE
BHOGIYA TOLA BEOHARI WARD
NO. 1 DISTRICT SHAHDOL
(MADHYA PRADESH)**

4. **BABY D/O LATE SHRI HETRAM,
AGED ABOUT 50 YEARS, VILLAGE
BHOGIYA TOLA BEOHARI WARD
NO. 1 DISTRICT SHAHDOL
(MADHYA PRADESH)**

5. **GULBASIYA D/O RAM PRATAP,
AGED ABOUT 58 YEARS,
OCCUPATION: AGRICULTURIST
BEOHARI AT PRESENT POST
DHODA TEHSIL JAISINGH NAGAR
DISTRICT SHAHDOL (MADHYA
PRADESH)**

6. **THE STATE OF MADHYA PRADESH
THROUGH COLLECTOR SHAHDOL
DISTRICT SHAHDOL (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI RITWIK PARASHAR – GOVERNMENT ADVOCATE)

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*This petition coming on for admission this day, the court passed
the following:*

ORDER

This petition, under Article 227 of the Constitution of India, has been filed against the order dated 10.04.2023 passed by the District Judge, Beohari, District Shahdol in RCA No.11-A/2015, by

which the applications filed by the respondents under Order 22 Rule 3 CPC and under section 5 of the Limitation Act, have been allowed.

2. It is submitted by the counsel for the petitioners that the plaintiff/respondent no.1 had filed a Civil Suit No.6-A/2012 for declaring the sale deed dated 02.12.2009 as null and void. The said civil suit was dismissed by judgment and decree dated 27.02.2015 passed by Civil Judge, Class-I, Beohari, District Shahdol in Civil suit No.6-A/2012. Being aggrieved by the said judgment, the plaintiff preferred an appeal under section 96 of CPC. During the pendency of the appeal, the sole appellant died on 22.01.2021. After the delay of 619 days, the legal representatives of sole appellant moved applications under Order 22 Rule 3 CPC and under section 5 of the Limitation Act for condonation of delay.

3. It is further submitted by the counsel that the appellate Court by ignoring the fact that no application under Order 22 Rule 9 CPC for setting aside abatement was moved, has allowed the application filed under section 5 of Limitation Act in filing an application under Order 22 Rule 3 CPC and accordingly has taken the legal representatives of the sole appellant on record. It is submitted that without setting aside the abatement, the application for taking the legal representatives of the deceased/appellant could not have been allowed.

4. Heard the learned counsel for the petitioners.

5. It is bit surprising that the trial court has allowed the application filed under section 5 of the Limitation Act; thereby condoning the delay in filing application under Order 22 Rule 3

CPC. The law in this regard is very clear. If an application for substitution of legal representatives of the plaintiff(s) or the defendant(s), is not filed within a period of 90 days, then by force of law the proceedings would stand abated. Thereafter the litigant is required to file an application under Order 22 Rule 9 CPC within a period of 60 days. If such an application could not be filed, then an application under section 5 of Limitation Act has to be filed for condonation of delay in filing an application under Order 22 Rule 9 CPC. In nutshell, no application for condonation of delay in filing an application under Order 22 Rule 3 or 4 CPC for taking the legal representatives of plaintiff(s) and defendant(s) is required. Thus, there appears to be some legal mistake, which has been committed by the trial Judge.

6. Be that whatever it may be.

7. The crux of the matter is that as to whether in absence of an application under Order 22 Rule 9 CPC, the Court below could have set aside the abatement of appeal or not ?

8. The application under Order 22 Rule 9 CPC and under section 5 of Limitation Act are more or less containing the same averment. It is true that an application under Order 22 Rule 9 CPC should be filed separately but the non-filing of the same, cannot be said to be a mistake on the part of litigant. It is the duty of the Lawyer to move every application, which is necessary under the law. But if the Lawyer has failed in discharging his professional duty, then litigant may not suffer specifically when no prejudice is caused to the adverse party.

9. Thus, it is clear that the Court should adopt a lenient view and the application filed under section 5 of Limitation Act can also be considered as an application under Order 22 Rule 9 CPC.

10. Under these circumstances, this Court is of the considered opinion that the order dated 10.04.2023 passed by the District Judge, Beohari, District Shahdol in RCA No.11-A/2015 does not require any interference but on a completely different ground.

11. Accordingly, the petition fails and is hereby **dismissed**.

(G.S.AHLUWALIA)
JUDGE

TG/-