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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 17th OF OCTOBER, 2025MISC. PETITION No. 5302 of 2025*KIRTI JAIN AND OTHERS**Versus**CHAMANLAL JAIN AND OTHERS*

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Appearance:

Shri Akhilesh Ku Jain - Advocate for the petitioners.

Smt. Mamta Mishra - P.L. for the respondent/State.

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ORDER

The present petition has been filed by the petitioner being aggrieved by the order dated 7.8.2025 passed by II Civil Judge, Junior Division, Uchehara, District, Satna in Civil Suit No.17/2019, whereby the applications submitted by the petitioner/ plaintiff for bringing the LRs of defendant no.1 and defendant no.16, I.A.No.2/2025 and I.A.No.3/2025, have been rejected.

2. As the application remained unopposed before the court below, this court is of the opinion that presence of respondents is not necessary.

3. It has been submitted by learned counsel for the petitioner that the application for substitution of LRs of defendant No.1 was well within time; but, the same has been rejected on the ground that death certificate of the deceased defendant no.1 and his family tree have not been filed. It has been submitted that it is apparent from the order-sheets that there is no dispute in regard to the legal heirs proposed by the petitioner/plaintiff in the application



by any of the defendants. In absence of any dispute in regard to death as well as the legal heirs, the application ought to have been allowed. The learned Court below has committed error of law in not allowing the application. It is further submitted that Order 22 Rule 4 C.P.C. prescribes for substitution of LRs of the defendant, which as per the dictum of the Hon. Apex Court is the power vested with the court and the same should be exercised judicially. Further, it is submitted that second application for substitution of LRs of defendant No.16 has been filed on the next hearing when the information was given in respect of death of defendant No.16 by the counsel before the court. Therefore, such application was based on bona fide and considering the date of knowledge/information ought to have been allowed. Counsel for the petitioner has relied on the judgment of the Hon. Apex Court in the case of Om Prakash Gupta alias Lalloowa (now deceased) and others Vs. Satish Chandra (now deceased), reported in AIR 2025 SC 1201, to submit that if the application under Order 22 Rule 4 CPC has been filed, prayer of setting aside abatement is inherent, and if the application under Order 22 Rule 9 CPC and section 5 of Limitation Act are not filed, then even assuming that it does not have an explicit prayer for setting aside abatement, such prayer could be read as inherent in the prayer for substitution in the interest of justice. It has also been held that the prayer for setting aside abatement and the dismissal consequent upon an abatement have to be considered liberally. The relevant paragraph of the said judgment is reproduced hereinbelow :-

"23. We find it difficult to agree with such reasoning. When an application praying for substitution had been made, then, even



assuming that it does not have an explicit prayer for setting aside the abatement, such prayer could be read as inherent in the prayer for substitution in the interest of justice. We draw inspiration for such a conclusion, having read the decision in *Mithailal Dalsangar Singh v. Annabai Devram Kini*, (2003)10 SCC 691. This Court reiterated the need for a justice-oriented approach in such matters. Inter alia, it was held that prayer to bring on record heir(s)/legal representative(s) can also be construed as a prayer for setting aside the abatement. The relevant passage reads as under:

"8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of



having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of 'sufficient cause' within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction. 10. In the present case, ... such an approach adopted by the Division Bench verges on too fine a technicality and results in injustice being done. There was no order in writing passed by the court dismissing the entire suit as having abated. The suit has been treated by the Division Bench to have abated in its entirety by operation of law. For a period of ninety days from the date of death of any party the suit remains in a state of suspended animation. And then it abates. The converse would also logically follow. Once the prayer made by the legal representatives of the deceased plaintiff for setting aside the abatement as regards the deceased plaintiff was allowed, and the legal representatives of the deceased plaintiff came on record, the constitution of the suit was rendered good; it revived and the abatement of the suit would be deemed to have been set aside in its entirety even though there was no specific prayer made and no specific order of the court passed in that behalf."

(emphasis

supplied)

4. As it is found from the impugned order that both the applications were not opposed by the defendants and such power is inherent with the Court, the Court ought to have considered the application in the light of the dictum of the Hon. Apex Court as the order has been passed *dehors* the principle as laid down by Hon. Apex Court, in the considered opinion of this court, the impugned order dated 7.8.2025 passed by II Civil Judge, Junior Division, Uchehara, District, Satna in Civil Suit No.17/2019 is bad in law



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and is hereby quashed. The matter is remanded back to the court below to decide the application afresh on its own merits, considering the law laid down by Hon. Apex Court in the case of Om Prakash Gupta (supra).

5. With the aforesaid direction, this petition is disposed of.

(DEEPAK KHOT)
JUDGE

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