

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CM No. 3325/2023 In
APCIV No. 20/2016

Chetna

.....Appellant(s)/Applicant(s)

Through: Mr. Raghu Mehta, Advocate.

Vs

Bhagwanti & Ors.

.....Respondent(s)

Through: Mr. D. K. Khajuria, Advocate.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(04.06.2025)

CM No. 3325/2023

01. A civil suit came to be commenced on file No. 325/Civil in 1986 originally preferred by one plaintiff, namely, Bhagwanti later on to be joined by the co-plaintiffs, thus, totalling seven in number, namely, Tulsi Devi, Parkash Singh, Kanta Devi, Parvati, Chanchal Devi and Kamlesh Devi involving sole defendant – Yog Raj.

02. The suit was for seeking a decree of permanent prohibitory injunction.

03. The said suit was involving a document said to be a Will dated 23.08.1985 of Gian Chand which is said to be

operating in favour of the defendant – Yog Raj against the interest of the sole plaintiff – Bhagwanti as well as her co-plaintiffs.

04. The trial Court of Sub Judge, Kathua came up with the findings that the sole defendant – Yog Raj had failed in dispensing with suspicious circumstances related to the execution and attestation of the Will in reference in its authenticity and thus suit came to be decreed by declaring the Will dated 23.07.1985 of Gian Chand as ineffective without affecting the rights of succession of the seven plaintiffs *qua* the estate of deceased Gian Chand.

05. The decree and judgment dated 18.08.2005 so passed by the Sub Judge, Kathua came to be assailed by Yog Raj, the sole defendant, in civil 1st appeal before the court of learned Principal District Judge, Kathua on file No. 11/Appeal which came to be *dismissed* vide judgment and decree dated 13.04.2010 resulting in institution of a civil 2nd appeal being CSA No. 16/2020 before this Court.

06. During the pendency of the civil 2nd appeal, the sole appellant/defendant – Yog Raj demised on 24.08.2013.

07. Since there was no representation coming forth from the end of the deceased sole appellant – Yog Raj, as such, this

Court, in terms of an order dated 01.03.2016, came to order the abatement of the appeal.

08. It is by reference to this abatement that the minor daughter, Chetna, of deceased appellant – Yog Raj came forward with an application APCIV No. 20/2016 filed on 20.04.2016, thereby seeking *setting-aside* of the abatement.

09. Since the application seeking *setting-aside* of abatement was time barred, as such, accompanied with an application for seeking condonation of delay.

10. In her condonation of delay application, the applicant/legal representative – Chetna came to mention her date of birth which is 14.10.2003.

11. The applicant-Chetna came to institute the two applications i.e., application for condonation of delay and application for seeking *setting-aside* of abatement of the appeal acting through her next friend Sh. Chaman Lal, paternal Uncle (Chacha).

12. The said two applications have remained pending on the docket of this Court in the course of which the applicant - Chetna came to attain her majority and through application CM No. 9684/2021 came to dispense her next friend Sh. Chaman Lal for enabling herself to pursue the two applications for

adjudication. The said application came to be *allowed* vide an order dated 06.04.2022.

13. On behalf of the non-applicants/decreed holders No. 1 and 2, objections came to be filed to said two applications through Advocate Mr. D. K. Khajuria who submits that the application filed by Chetna, the daughter of sole appellant – Yog Raj lacks *bona fide* as she has not disclosed in her both applications that her mother is alive and, therefore, applications, which are for coming on record as legal representative to pursue the civil 2nd appeal, could have been filed within time by her mother joined by herself.

14. Apparently, the submission of Mr. D. K. Khajuria, learned counsel, appears to be very catchy but upon being tested in the light of Order 32 of the Code of Civil Procedure, 1908 would have to suffer *rejection* from this Court in the sense that protection of interest of minor in a ligation is, in fact, the duty of the Court also as is the spirit of Order 32 rule 3 of the Code of Civil Procedure, 1908.

15. Otherwise also, section 6 of the Limitation Act, 1963 (J&K Limitation Act, Svt., 1995), always reserved an option in favour of applicant – Chetna to come up upon attaining age of majority with a claim to get herself impleaded in the civil 2nd appeal as legal representative of her father, appellant – Yog Raj

and for that purpose to seek *setting-aside* of abatement and condonation of delay attending therewith.

16. Section 6 of the Limitation Act would have extended period of limitation in her favour with effect from the date of her attaining the majority. The *bona fide*, thus, is on the side of applicant – Chetna that during her minority she came forward with the requisite application immediately following the passing of the order dated 01.03.2016 of abatement of the appeal.

17. Therefore, this Court is inclined to condone the delay and *allow* the application for *setting-aside* of abatement.

18. This Court, therefore, *allows* condonation of delay application.

19. Application APCIV No. 20/2016 seeking *setting-aside* of abatement is also *allowed*.

20. Order dated 01.03.2016 is recalled.

21. Appeal is restored to its original number.

22. Applicant is impleaded as legal representative of the sole appellant – Yog Raj for enabling her to pursue the civil 2nd appeal to adjudication on merits on the basis of substantial questions of law framed in the said civil 2nd appeal in terms of an order dated 02.06.2010.

23. Registry to send for the record of civil suit on file No. 325/Civil titled – **“Mst. Bhagwanti & Ors. vs Yog Raj”** from the court of learned Sub Judge, Kathua as well as civil 1st appeal on file No. 11/Appeal titled – **“Yog Raj vs Bhagwanti”** from the court of the learned Principal District Judge, Kathua.
24. List civil 2nd appeal (CSA) No. 16/2010 on **24.07.2025**.
25. CM No. 3325/2023 is, accordingly, **disposed of**.

JAMMU
04.06.2025
Bunty

