

Bansi Lal vs. Rattan Singh and others

**CMP No. 19391 of 2026 in RSA
No. 502 of 2011**

Reserved on 14.09.2026

23.09.2026 Present: Mr Sumit Sood, Advocate for the appellant.
Mr Divya Raj Singh, Advocate for the respondent.

The present application has been filed for passing appropriate orders under Order 32, Rule 8, 12 and 13 of the CPC. It has been asserted that the original civil suit was filed on 30.01.1996 against the appellant and one Smt. Bawi, D/o Basanti, in the Court of the learned Civil Judge (Junior Division), Barsar, Camp at Una, District Una, which was dismissed on 30.05.2008. The name of Bawi was deleted on 08.11.2005. Kewal Singh died on 11.04.2006, and his legal representatives were brought on record. Legal representatives No. 3 and 4 were minors. The RSA was also filed by respondent Nos. 3 and 4 acting through their mother, as natural guardian. The respondents have attained majority. Therefore, notice is required to be issued, and they are required to be given an option, as required by law, to make an election whether they want to proceed with the civil suit filed by them or not. Hence, the application.

2. I have heard Mr Sumit Sood, learned counsel for the appellant/applicant and Mr Divya Raj Singh, learned counsel for the respondent.

3. Mr Sumit Sood, learned counsel for the appellant/applicant, submitted that the legal representatives were minors at the time of bringing them on record. They have attained majority, and they are required to be given an option to proceed with the suit. Hence, he prayed that the present application be allowed and the notice be issued to the minor legal representatives to elect whether they want to proceed further with the matter or not.

4. Mr Divya Raj Singh, learned counsel for the respondent, submitted that the application could have only been filed by the minors as per the provisions of Order 32 and the application filed by the opposite party is not maintainable. Hence, he prayed that the present application be dismissed.

5. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

6. Order 32 Rule 8 of the CPC deals with the retirement of the next friend and provides that a next friend shall not retire without first procuring a fit person to

be put in his place. Order 32 Rule 12 of the CPC provides that a minor plaintiff or minor not party to the suit on whose behalf an application is pending shall elect whether he will proceed with the suit or application after attaining majority. Order 32 Rule 13 deals with a minor co-plaintiff who decides to repudiate the suit.

7. It is apparent from the various provisions of Order XXXII of the CPC that they deal with the procedure to be adopted by the minor on attaining majority and provide that the minor shall file an application on attaining majority whether he wants to proceed with the suit or the application. The provision does not contemplate that any such application has to be filed by the other party. It was laid down by the Allahabad High Court in *Hazari v. Suresh*, 1979 SCC OnLine All 892: AIR 1979 All 242¹ that the rule is made for the benefit of the minor who attains majority during the pendency of the suit and does not envisage a position where a minor does not move an application under sub-rule (1) or sub-rule (4). Similarly, the Gujarat High Court also held in *Dharamshi Polabhai v. Ghampaklal Vashram*, 1983 SCC OnLine Guj 62: AIR 1983 Guj 217² that Order 32 Rule 12 of the CPC calls upon the concerned minor plaintiff to opt out on attaining majority during the pendency of the suit and to decide whether he would like to

¹ Para 10 at page 243 of AIR

² Para 9 at page 22 of AIR

proceed with the suit or application. If he decides to proceed with the suit, he has to apply for an order discharging the next friend. On the other hand, if he elects to abandon it, he may apply to get his suit dismissed. Kerala High Court held in *Femi Joseph v. Federal Bank*, 2014 SCC OnLine Ker 28656, that it is the duty of the minor to take steps to discharge the guardian and if he does not do so, he will be bound by the decree passed by the Court. Therefore, there is force in the submission of learned counsel for the respondent that such an application could have been filed by the minor and not by the other party. No provision of law, taking a view that such an application can be filed by a minor, was brought to the notice of this Court.

8. Consequently, the present application is not maintainable and is dismissed as such. The present application stands disposed of.

(Rakesh Kainthla)
Judge

23rd September, 2026
(Nikita)