



2026:AHC:97612

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 453 of 2026

Deoraj Singh And 4 Others

.....Appellant(s)

Versus

Moradabad Syntax Limited Through Managing
Director Arun Kumar Swaroop And 3 Others

.....Respondent(s)

Counsel for Appellant(s) : Gaurav Kumar Srivastava, Tawwab
Ahmed Khan

Counsel for Respondent(s) :

Court No. - 39

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the appellants/plaintiffs.
2. The present First Appeal From Order has been filed against the judgment and order dated 29.11.2025, passed by the learned Additional District Judge, Court No.7, Moradabad in Misc. Case No. 137 of 2022 (Deoraj Singh and others Vs. Moradabad Syntax Limited and others), whereby the learned trial court has rejected the application 34-Ka filed by the plaintiffs/ appellants for amendment regarding substitution of the heir of defendant/opposite party no.2 (Arun Kumar Swaroop) as well as dismissed the Misc. Case No. 137 of 2022 for Restoration of Original Suit No 513 of 2005.
3. The plaintiffs/appellants had filed a Civil Suit No. 513 of 2005 against the defendants/respondents seeking relief of permanent injunction. The written statement was filed by the respondent no.4, who is defendant no.4 in the said suit on 20.9.2018. An amendment application has been filed on 18.5.2017 by the plaintiffs/appellants that plaintiff No.2-Anil Kumar has died on 10.3.2017 leaving his wife Smt. Chanda, son Amit Kumar and daughter-Parul as his legal heirs and they shall be substituted.
4. The plaintiffs/appellants has filed an application under Order 9 Rule 9 CPC read with Section 151 CPC on 25.5.2022 that the said case was fixed for disposal 120-C and defendant no.4, who is only contesting the suit had not filed any objection despite last opportunity provided. Prior to lunch,

learned counsel for the plaintiffs, Sri Deepak Bajaj, Advocate appeared before the Court and apprised the court about the proceedings of the case. There was no objection filed by the defendant no.4, hence file was reserved for orders. There was no defendant present on the call. On 6.5.2022, it came to the knowledge of the plaintiffs/appellants that the suit was dismissed in default on 5.5.2022, hence recall application has been filed on 25.5.2022.

5. Against the said application, objection was filed on 8.4.2024. The plaintiffs/appellant has filed order sheet with effect from 31.10.2025 to 28.11.2025. On perusal of the order sheet dated 21.11.2025, it is appeared that in the aforesaid Misc. Case, the opposite party no.2 has died. It has been mentioned by the opposite party no.4 that the opposite party-Arun Kumar's substitution application is filed in Misc. Case No. 642 of 2019 is still pending. The applicant has filed application 33-C today and only the opposite party no.4 appeared before the Court after sufficient service. In the order sheet, it is mentioned that learned counsel for opposite party no.4 has discussed on 14.11.2025 that opposite party no.2 has died and also endorsed it on the order sheet. However, the applicant has also filed a substitution application and he seeks time for 15 days on 17.11.2025, but file belongs to action plan, hence four days time was granted. The applicant has to file substitution application about opposite party no.2. The applicant is neither party in Misc. Case No. 642 of 2019 nor he could inspect the suit file, hence as per Order 22 Rule 10-A, the opposite party no.4 has to be directed to inform the names of legal representatives of deceased opposite party no.2. The opposite party no.4 has strongly objected on the said application that he does not having any information about opposite party no.2 because he is party in Misc. Case No. 642 of 2019. Hence, he is having information of this fact. The opposite party no.2 was never appeared before the Court. The opposite party no.4 is not having any knowledge nor any information about the opposite party no.2. The applicant has filed said application only to cause delay the proceedings of the case and he is trying to twist the matter in question.

6. After hearing both the parties, learned trial court has passed the order that opposite party no.2 did not appear in the said case till that date and the proceedings is pending for service sufficient on him. As per Order 22

Rule 10A, if any party is present in the suit through vakalatnama, then there is responsibility on the said counsel that he should provide information of death of party to the suit to another party to the suit and there is no entire liability has been imposed on the defendants to provide all complete detail as per Order 22 Rule 10A. Other than this, both are different and they do not having any family relation.

7. Learned trial court has held in the order dated 21.11.2025 that it appears that the applicant/plaintiff has simply filed application to cause wilful and deliberate delay, whereas it is liability and duty of the plaintiff that if any defendant had died and he has got information about death, then he should inquire legal heirs of the deceased and move appropriate application for their substitution in the case, whereas, the plaintiffs has consistently delaying the matter and trying to keep the matter pending, hence application 33C was rejected by the learned trial court and further last opportunity had been provided to the applicant/plaintiffs that he should collect the details about legal heirs of the party and take legal recourse in accordance with law. The file was fixed for 27.11.2025 for hearing.

8. On 27.11.2025, learned counsel for the plaintiffs and opposite party no.4 were present and the appellants has filed application 34-Ka. The next date was fixed 28.11.2025 for disposal of application 34Ka. On 28.11.2025, the case was called out. Learned counsel for the applicant/plaintiff and the opposite party no.4 were present. The opposite party no.4 has filed objection 36-Ga alongwith affidavit and the matter was fixed for hearing/disposal on 29.11.2025 for 34Ka.

9. The applicant/plaintiff has filed an application on 26.11.2025 for substitution and amendment of the suit. In the said application it is stated that in the said Misc. Case No. 137 of 2022, the opposite party no.2 has died. The Information have been provided by the opposite party no.4 on 14.11.2025 in the court proceedings of Misc. Case No. 642 of 20-19, but they did not mention any date of death or details of legal heirs of deceased which is contrary to the Order 22 Rule 10A CPC. After great efforts, the applicant/plaintiff has got details of Original Suit No. 474 of 2003 (Raghuvir Singh Vs. Devendra Singh and others), in which opposite party

no.2, Arun Kumar Swarup was opposite party no.6 and names of legal heirs of deceased Arun Kumar was present. Except it, the applicant/plaintiff is not having any details about legal heirs of deceased Arun Kumar Swarup, hence on the basis of said details, the applicant/plaintiff has filed the substitution application and amendment application on 26.11.2025.

10. The opposite party no.4 has filed objection on 27.11.2025 that the application filed by the plaintiff/appellant is contrary to the law and fact and liable to be dismissed, whereas the details mentioned in the application regarding Misc. Case No. 642 of 2019 on 14.11.2025, the opposite party no.4 is not having any objection but rest contents are absolutely denied. In Misc. Case No. 642 of 2019, it is submitted that it is clear from paragraph no.2 of the said application that Shailendra Singh has died around two and half years ago, hence on the basis of this, proceedings of this suit is already abated. Despite it, there has been no application filed for cancellation of document and no specific cause has been shown. The said application is barred by provisions of Order 22 Rule 4 CPC and Section 5 of Limitation Act.

11. On the basis of said application in paragraph 2A as per proposed amendment, there was two legal heirs of Arun Kumar, whereas in the said application, only one legal heir has been mentioned. The applicant/plaintiff did not file any death certificate of opposite party no.2 to ascertain date of death of opposite party no.2. The objector did not having any personal knowledge of about opposite party no.2 Arun Kumar. The objector has purchased the property in dispute by way of proceedings of Company Winding Up No. 72 of 1997 by appointed official liquidator under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as SARFAESI Act) on 6.5.2012.

12. The applicant/plaintiff has filed Writ Petition No. 20104 of 2012 (Deoraj Singh Vs. State of UP) before the High Court of Judicature at Allahabad which is already dismissed on 24.4.2012 with the finding that the applicant/plaintiff is having alternative remedy available in accordance with law under the SARFAESI Act. Whereas, the

applicant/plaintiff is trying to file one or another case in different courts. One member of family of Deoraj Singh, namely, Yashpal Singh has filed Appeal No. 103/35/2022 before the Debt Recovery Tribunal, Allahabad under the SARFAESI Act. The objector has also raised his objection that the plaintiff was also appeared before the Hon'ble High Court at Delhi and Delhi High Court has rejected the application of the plaintiff vide its order dated 19.7.2012, which is filed with this objection for perusal of the Court. The objector is having no relation with the opposite party no.2, Arun Kumar, hence he does having any information either about death of opposite party no.2 or his legal heirs. The plaintiff himself has impleaded Arun Kumar in the original suit and for the last 20 years, the plaintiff is consistently dragging the said suit in absolute careless way.

13. The objector has stated that on bare perusal of facts mentioned in original suit, it is clear that it was filed on totally false, fabricated and concocted ground, hence to avoid for final judgement, plaintiff has himself got the said suit dismissed in default and thereafter, consistently continued said Misc. Case. It is absolutely incorrect that objector had not complied the provisions of order 22 Rule 10A CPC. The objector, who is defendant no.4 in the said suit and defendant no.2, who is now deceased never filed their written statement jointly and there is no evidence available of this kind in the original file. The statement of plaintiff/applicant that die to entire effort, he was able to get the information about legal heirs of Arun Kumar Swarup, whereas, he has impleaded Arun Kumar Swarup in the said suit 20 years ago. The plaintiff has simply alleges in paragraph no. 8 of his plaint that defendant no.2 has illegally plotting the property in dispute and there was no other claimant against defendant no.2. It is true that applicant/plaintiff Deoraj Singh had wrongly impleaded the party in his suit so that the suit shall be lingered on and continued and the dispute shall remain continued on the property purchased by the objector in the Company Winding Petition under SARFAESI Act and there shall be continued dispute on the title of the objector/defendant no.4.

14. In the said Misc. Case, the plaintiff himself has informed about death of Anil Kumar on 10.3.2017 and also his legal heirs were recorded on the original suit, whereas the restoration application had been filed by

deceased Anil Kumar himself and is continuing for the last two years. Whereas, in the affidavit, the applicant no.1 has been told that he is pairokar of applicant no.2, deceased Anil Kumar, whereas applicant nos. 1 and 2 are mentioned as real brother. It is true that that an objection was raised by the objector/defendant no.4 that the objector/defendant no.4 has purchased the said property in accordance with the proceedings under SARFAESI Act. The plaintiff wants to create unnecessary dispute in said property of defendant no.4/objector. He has impleaded false, fabricated and concocted parties in the case. The main aim of plaintiff/applicant is to remain the case pending. It is also objected that all these acts of plaintiff/applicant Deoraj Singh and Anil Kumar, if he is alive, they shall be prosecuted for committing fraud with the court. The plaintiffs has made request for impleadment of legal heirs of defendant no.2, objector is not having any information about it as he does not know, when Arun Kumar Swarup has died. The plaintiff mentioned Application No. 474 of 2003 that application has not been filed by him. Hence, in view of facts and circumstances, the proceedings against opposite party no.2 is already abated and proceedings is liable to be dismissed. Hence, the application filed by the plaintiff alongwith Misc. Case is liable to be dismissed with cost.

15. All these facts and circumstances has been clearly considered by the learned trial court in the impugned order dated 29.11.2025. Learned trial court has specifically held that despite several opportunities has been provided to the applicant/plaintiff, none was present for the applicant/plaintiff to press the application 34Ka.

16. In view of facts and circumstances of the case which is also mentioned in the impugned order as well as in this order, learned trial court has held that the case was called severally despite it, none is present for the applicant/plaintiff. It is also appeared that said proceedings has been filed in Misc. Case with malafide intention. He simply wants to continue civil misc. case. Learned trial court after considering all these reasons, has rejected the application 34Ka and also civil misc. case in presence of the opposite party no.4/objector.

17. In view thereof, there is neither any illegality nor irregularity nor

perversity in the order dated 29.11.2025. It is liable to be confirmed and it is affirmed accordingly. The appeal is liable to be dismissed and it is **dismissed.**

(Abdul Shahid,J.)

April 27, 2026

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