**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 603 of 2016**

1. Gendram Sharma S/o Ramratan Sharma, Aged About 66 Years, R/o Village Lagra, Tehsil Pamgarh, District Janjgir Champa (Chhattisgarh)

**---- Petitioner**

**Versus**

1. Ripusudan Prasad Gauraha S/o Shree Dwarika Prasad, Aged About 73 Years R/o Loharsi Son, P. O. Loharsi Son, Tehsil Masturi, District Bilaspur (Chhattisgarh)

2. Trilokinath Sharma, S/o Shree Kedarnath Sharma, Aged About 65 Years, R/o Shivam Vihar, Baima Nagoi Road, Khamtarai, District Bilaspur (Chhattisgarh)

3. Smt. Urmiladevi, W/o Shree Kedarnath Sharma, Aged About 85 Years, R/o Shivam Vihar, Baima Nagoi Road, Khamtarai, District Bilaspur (Chhattisgarh)

4. Komal Prasad, S/o Shree Triyugi Narayan Sharma, Aged About 63 Years, R/o Village Lagra, Tehsil Pamgarh, District Janjgir Champa (Chhattisgarh)

5. Dhruv Kumar Sharma, S/o Shree Triyugi Narayan Sharma, Aged About 61 Years, R/o Village Malkharoda, District Janjgir Champa (Chhattisgarh) At Present R/o Triyugi Niwas, Behind Old Bus Stand, Near Vegetable Market, Janjgir, District Janjgir Champa (Chhattisgarh)

6. Smt. Ramadevi, D/o Shree Triyugi Narayan Sharma, Aged About 51 Years, R/o Village Misda, Tahsil & District Janjgir Champa (Chhattisgarh)

7. Smt. Kamladevi D/o Shree Triyugi Narayan Sharma, Aged About 65 Years, R/o Village Baima, Tehsil & District Bilaspur (Chhattisgarh)

8. Padumnath Tiwari, S/o Shree Khambhan Prasad Sharma, Aged About 63 Years, R/o Lagra, Tehsil Pamgarh, District Janjgir Champa (Chhattisgarh)

9. Smt. Gendabai, D/o Shree Khambhan Prasad Sharma, Aged About 65 Years, R/o Dongakohrod, Tehsil Pamgarh, District Janjgir Champa (Chhattisgarh)

10. Smt. Punita Devi, D/o Shree Khambhan Prasad Sharma, Aged About 56 Years, R/o Shastri Chowk, Akaltara, District Janjgir Champa (Chhattisgarh)

11. Rajkumar Tiwari, S/o Shree Bhagwati Prasad, Aged About 63 Years, R/o Shreeram Nagar, Near Voltaire Line, Raipur, District Raipur (Chhattisgarh)

12. Smt. Janki Devi D/o Badri Prasad, Aged About 71 Years, R/o Pachori, Tehsil Champa, District Janjgir Champa (Chhattisgarh)

13. Ram Kumar Tiwari, S/o Shree Bhagwati Prasad, Aged About 63 Years, R/o Purani Basti, Korba, Tehsil & District Korba (Chhattisgarh) At Present R/o Village Dhaneli, P. O. Dhaneli, Tehsil Pamgarh, District Janjgir Champa (Chhattisgarh)

14. Rohini Kumar Tiwari, S/o Shree Bhagwati Prasad, Aged About 61 Years, R/o Balco Nagar, Korba, Tehsil & District Korba (Chhattisgarh)

15. Ravindra Nath Sharma, S/o Shree Kedarnath Sharma, Aged About 74 Years, R/o E-8/400, Trilochan Nagar, Shahpura Extension, Bhopal, District Bhopal (Madhya Pradesh)

16. Branch Manager, State Bank Of India, Pamgarh, District Janjgir Champa (Chhattisgarh)

17. State Of Chhattisgarh, Through Collector, Janjgir, District Janjgir Champa (Chhattisgarh)

**---- Respondents**

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For Petitioner Shri Anish Tiwari, Advocate

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**21/10/2016**

1. Plaintiff No.3 Urmila Devi died on 24.02.2014 and the plaintiff No.9 Genda Bai died on 30.12.2009. The application for substitution was filed on behalf of the said

plaintiffs to bring their legal representatives on record along with application for setting aside the abatement and the application for condonation of delay. The same was allowed by the trial Court subject to payment of cost of Rs.1500/- to the petitioner/defendant, against which this writ petition has been filed.

2. After hearing learned counsel for the petitioner, it is apparent on record that the plaintiff No.3 Urmila Devi died on 24.02.2014 and at that time her other legal heirs i.e. plaintiff No.2 & 15 were already on record. Likewise the plaintiff No.9 Genda Bai died on 30.12.2009 and her legal heirs plaintiff Nos.8 & 10 are already on record. The trial Court recorded a finding that the legal heirs of Urmila Devi & Genda Bai were already on record and thereby condoned the delay.

3. The Supreme Court in **Banwari Lal (Dead) By Legal Representatives and another v. Balbir Singh**[1] has clearly held that the provisions of Order 22 of the Civil Procedure Code are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In paras 9 & 10 of **Banwari Lal** (supra), the Supreme Court held thus :

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1 (2016) 1 SCC 607

9. Provisions of Order 22 CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272, a Five Judge Bench of this Court held as under :

> "26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions

contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. *Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise*

> *of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice...* "
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> (emphasis supplied)
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> 10. In *Sital Prasad Saxena v. Union of India*, it was observed that the rules of procedure under Order 22 CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained.

4. In view of the settled legal position and further keeping in view that the legal heirs of plaintiffs No.3 & 9 Urmila Devi & Genda Bai respectively, were already on record representing their estate and as such the learned trial Court is absolutely justified in allowing the application, however, the defendant's interest has been protected by compensating a sum of Rs.1500/-.

5. As a sequel, the writ petition, *sans substratum*, is liable to be and is hereby dismissed.

6. As the suit is pending consideration since 2009 the trial Court is directed to decide the suit finally within a period of three (3) months from the date of receipt of certified copy of this order.

Sd/-

(**Sanjay K. Agrawal**)
Judge

Gowri