

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO.232 OF 2016
IN
SUIT NO.1451 OF 2008**

Anuradha Prakash Kapur & Anr.Applicants/Plaintiffs

V/s.

Bawa Randhir Singh Bhalla & Ors.Defendants

And

Maneesh Bawa & Ors.Respondents

Mr. Vikram Nankani, senior advocate a/w. Mr. Ishwar Nankani & Ms. Janki Garde i/b. Nankani & Associates for the applicants/plaintiffs.

Ms. Rajani Iyer, senior advocate a/w. Mr. Paresh Shah and Ms. Vileena Mirasee i/b. M/s. Shah & Sanghavi for the defendant nos.1 to 6, 10 to 12, 14,16 and 17 and for the respondent nos.1 to 7.

Mr. Gautam Mehta a/w. Ms. Manisha Kapadia for the defendant nos.19 to 23 and for the respondent nos.8 to 10.

Mr. M.K. Banatwala for the defendant nos.24 and 25.

**CORAM : K.R.SHRIRAM,J
PRONOUNCED ON : 3rd AUGUST, 2016**

P.C.:-

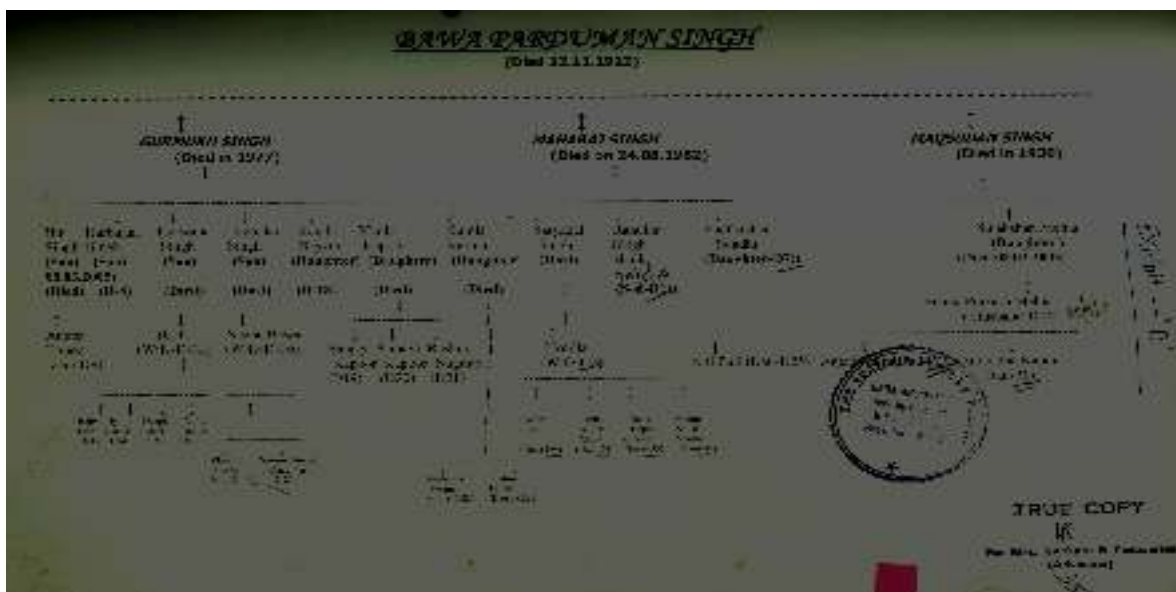
1 One Bawa Parduman Singh, who died on 22nd November, 1922 had three sons, viz., Gurmukh Singh who died in 1977, Maharaj Singh who died on 24th August, 1982 and Maqsudan Singh who died in 1930. Maqsudan Singh had a daughter – Sulakshan Mehta, who died on 8th March, 2005 and husband of Sulakshan Mehta was Anand Prakash Mehta, who is defendant no.24 and who died on 28th September, 2011. The plaintiff no.1, plaintiff no.2 and defendant

no.25 are the daughters of Sulakshan Mehta and Anand Prakash Mehta. The plaintiffs and defendant no.25 are the grand daughters of Maqsudan Singh, who was the son of Bawa Parduman Singh. The defendant no.1, who died on 29th May, 2014 is the son of Maharaj Singh. As stated earlier Maharaj Singh and Maqsudan Singh were brothers. Therefore, the plaintiffs' mother and deceased defendant no.1 were first cousins.

2 This chamber summons is taken out to bring on record the legal heirs of defendant no.1 – Randhir Singh Bhalla, who was the first cousin of the plaintiffs' mother. Apart from bringing on record the legal heirs of defendant no.1, the plaintiffs are also seeking in this chamber summons to replace defendant nos.8 and 18 with their legal heirs and for deletion of defendant nos.9,13,15 and 24 from the array of defendants. As stated earlier defendant no.24 was the father of the plaintiffs. The plaintiffs do not wish to bring on record any legal heirs of defendant nos.9,13 and 15 as, according to the plaintiffs, their heirs and legal representatives are not known to the plaintiffs. The plaintiffs are also seeking deletion of the name of defendant no.2, who expired on 22nd December, 2011 but the legal heirs of defendant no.2 are already on record as defendant nos.3,4,5 and 6.

3 Therefore, in this application the plaintiffs wish to bring on record the legal heirs of defendant nos.,1,8 and 18 and score out defendant nos.2,9,13,15 and 24. We have explained earlier how defendant no.1 was related to the plaintiffs.

Defendant no.8 was the son of Gurmukh Singh. Gurmukh Singh as stated earlier was the brother of Maqsudan Singh. Similarly Kamla Nayyar, defendant no.18 was the daughter of Gurmukh Singh. Therefore, defendant no.8 and defendant no.18 were the first cousins of the plaintiffs' mother. In other words, the plaintiffs' mother, defendant no.1, defendant no.8 and defendant no.18 were grand children of Bawa Parduman Singh. Therefore, the parties are very closely related. The family tree, copy whereof is annexed at Exhibit 'A' to the plaint is as under :-



4 It is necessary to note that defendant nos.13 and 15, whose names plaintiffs are seeking to delete in this application, passed away even prior to the filing of the suit. Defendant no.13 was the daughter in law of Gurmukh Singh (she was married to late Kulwant Singh S/o. Gurmukh Singh) and defendant no.15 was the daughter of defendant no.13 and late Kulwant Singh. Defendant no.24, the father of the plaintiffs died on 28th September, 2011.

5 The reliefs sought in this suit are (a) to direct the defendant nos.1 to 23 to disclose on oath the complete list of all assets and/or properties forming part of the estate of Late Bawa Parduman Singh and/or such assets and/or properties that are acquired therefrom and/or from the incomes derived therefrom apart from those set out in the schedule at Exhibit 'B' to the plaint; (b) for a declaration that the plaintiffs and defendant nos.24 and 25 have an undivided 1/3rd right, title and interest in respect of the said properties and incomes derived therefrom; (c) for an order and decree of partition by metes and bound in respect of the plaintiffs 1/12th share each in respect of the said properties and/or assets and/or properties bought from such income derived from those properties and/or from the joint family business; (d) for a decree against defendant nos.1 to

23 to jointly and/or severally pay to the plaintiffs its 1/12th share each in respect of the incomes and/or profits made and/or derived from either the sale of the said properties/assets and/or such other properties that are disclosed and (e) for an order of permanent injunction restraining defendant nos.1 to 23 or their servants, agents, successors, etc., from alienating or encumbering or creating any third party right against any of the said properties.

6 The counsel for the plaintiffs, Mr. Nankani submitted that the defendant no.1 expired on 29th May, 2014. On 4th January, 2016 when the matter was listed before the court, the counsel appearing on behalf of defendant nos.1 to 6, 10 to 12, 14, 16 & 17 made a statement that defendant nos.1 & 2 have expired and accordingly upon the request of the Advocate for the plaintiffs, time was granted to implead the heirs and legal representative of the deceased defendants. Chamber summons was lodged on 27th January, 2016 and hence the suit as against defendant nos.1 & 2 has not abated and this application also is within time. Mr. Nankani further submitted that in any event, the other legal heirs of the person, whose property the plaintiffs are seeking partition, are already on record and hence Article 120 of the Limitation Act will not be applicable but Article 137 is

applicable.

The counsel also submitted that it is true that the Advocate for defendant nos.1, 2 to 6, 10 to 12, 14, 16 & 17 by their letter dated 29th January, 2014 informed the Advocates for the plaintiffs that the defendant no.1 had passed away on 29.5.2014. It was submitted that in the said letter what was stated is as under :-

“2. As per the family arrangement arrived at during the life time of Late Shri Randhir Singh Bhalla your clients may bring the following persons on record in the above suit if they so desire.

(a) Mr.Maneesh Bawa son of Late Shri Randhir S.Bhalla

(b) Mr.Sumeet Bawa son of Late Shri Randhir S.Bhalla

(c) Smt.Archana Bhalla wife of Late Shri Randhir S.Bhalla

All temporarily residing at Devi Dayal Road, Mulund (West), Mumbai-400 018”.

7 Thereafter, the Advocate for the plaintiffs vide their letter dated 11th August, 2014 replied as under :-

“We refer to your letter dated 29th July 2014 informing us about the death of your client Mr.Bawa Randhir Singh Bhalla, the Defendant No.1 in the above matter and asking our clients to bring the persons named therein as per the Family Arrangement arrived at during lifetime of Defendant No.1 on record.

In that regard, our clients have instructed us to call upon you to furnish to us a copy of the Family Arrangement as mentioned in your above referred letter.

You are also requested to furnish to us a copy of the death certificate of Mr.Bawa Randhir Singh Bhalla and names of all his heirs and legal representatives.”

The Advocates for the defendant no.1 never responded to this letter. Therefore, it cannot be stated that the time to bring the legal heirs on record got triggered on the date the letter dated 29th July, 2014 was received.

8 Mr. Nankani also submitted that in any event, under Rule 10A of Order 22 of the Code of Civil Procedure, the time should be deemed to have triggered only on the date the Advocate appearing for a party informs the court about the death of that party and hence limitation is deemed to have triggered only on 4th January, 2016 in this case, when the matter was listed before this court and counsel for the defendant no.1 informed the court about the demise of defendant no.1 and 2.

9 Mr. Nankani further submitted that it is trite that a highly technical and pedantic approach in such matters should be eschewed as ultimately the endeavour should be to see that a party is able to prosecute the remedy available in law on merits. The counsel further submitted that a lenient approach as regards abatement of a suit is required to be taken. The counsel submitted that in cases of such type a liberal view is required to be taken and the rules of procedure are

enacted to further the cause of justice and not to create obstacles in their way or to impede it and if the delay is not condoned, it would involve a fresh suit and one more round of litigation, both of which needed to be avoided and therefore, the court should allow the chamber summons.

10 It was submitted by Ms. Iyer, senior counsel, with Mr. Gautam Mehta supporting her, that the suit as regards the said defendant nos.1, 8 and 18 has abated and the question of bringing the legal heirs of the said defendants on record did not arise. The dates as submitted by the counsel for the defendant nos.1,8 and 18 are as under :-

<i>Sr. No.</i>	<i>Date</i>	<i>Particular</i>
<u>DATES PERTAINING TO DEFENDANT NO.1</u>		
1	28 th September, 2011	Defendant no.24 plaintiffs' father passed away
2	29 th May, 2014	Defendant no.1 passed away at New Delhi
3	31 st May, 2014	Obituary published in Hindustan Times-New Delhi
4	31 st May, 2014	Obituary published in Times of India- New Delhi
5	1 st June, 2014	Obituary published in Hindustan Times-New Delhi
6	1 st June, 2014	Obituary published in Times of India-New Delhi
7	29 th July, 2014	Shah & Sanghavi addressed a letter to M/s. Nankani & Associates (Advocate for the plaintiffs) intimating death of defendant no.1 and names and address of respondent nos.1 to 3 being legal heirs of defendant no.1 (delivered on 31 st July, 2014)
8	28 th August, 2014	Period of 90 days to bring the legal heirs of defendant

		no.1 namely respondent nos.1 to 3 came to an end (30 th May, 2014 to 28 th August, 2014 = 90 days) calculating from 30 th May, 2014
9	28 th October, 2014	Period of 90 days to bring the legal heirs of defendant no.1 namely respondent nos.1 to 3 came to end (31 st July, 2014 to 28 th October, 2014) (the date of delivery of letter dated 29 th July, 2014)
10	24 th January,2016	Chamber summons taken out after the delay of 495 days from 28 th August, 2014 and after the delay of 434 days from 29 th October, 2014 inter-alia to bring the legal heirs of defendant no.1
<u>DATES PERTAINING TO DEFENDANT NO.8</u>		
1	8 th October, 2012	Defendant no.8 passed away at Chennai
2	10 th October, 2012	Obituary published in Times of India-New Delhi Edition
3	10 th October,2012	Obituary published in Hindustan Times- New Delhi Edition
4	6 th January, 2013	Period of 90 days to bring the legal heirs of defendant no.8 namely respondent nos.4 to 7 came to end (8 th October, 2012 to 6 th January, 2013 = 90 days)
5	24 th January,2016	Chamber summons taken out after delay of 1114 days
<u>DATES PERTAINING TO DEFENDANT NO.18</u>		
1	26 th January, 2011	Defendant no.18 passed away at New Delhi
2	29 th January, 2011	Obituary published in Times of India-New Delhi Edition
3	29 th January, 2011	Obituary of defendant no.18 published in Hindustan Times- New Delhi Edition
4	27 th April, 2011	Period of 90 days to bring the legal heirs of defendant no.18 namely respondent nos.8 to 10 came to end and therefore suit abated
5	24 th January,2016	Chamber summons taken out after delay of 1671 days

11 Ms. Iyer, senior counsel for the legal heirs of defendant no.1 elaborated : (a) Under Article 120 of the Limitation Act, 1963 the starting point of limitation for filing an application to bring the legal

representatives of the deceased on record is the date of the death of the party. If no application is filed within the period of limitation, the suit abates. The application has to be filed to bring the legal representatives of the deceased on record within 60 days from the date of the abatement and if there is a delay in making such an application, the delay should be properly explained in the affidavit filed in support of the petition under Section 5 of the Limitation Act;

(b) In the instant case on 29th July, 2014 the advocate for the plaintiffs was informed by the advocate for the defendant no.1 regarding the demise of defendant no.1 and it has been admitted by the plaintiffs that they were so informed; (c) The defendant no.1 passed away at New Delhi and the obituaries were published in Hindustan Times, New Delhi and Times of India, New Delhi on 31st May, 2014 and again on 1st June, 2014 and the plaintiffs ought to be aware of the same since they were closely related to defendant no.1 and were also resident of New Delhi; (d) In any event 90 days period would have triggered from 29th July, 2014 when the advocate for defendant no.1 addressed a letter to the advocate for the plaintiffs and the 90 days period expired on 28th October, 2014; (e) The chamber summons has been taken out only in 2016 and there has been a delay of 495 days, which delay has not been explained and therefore, the court should

reject the chamber summons as far as defendant no.1 was concerned and (f) There is no explanation in the affidavit in support whatsoever as to why the applicants did not take steps to bring the legal heirs of defendant no.1 on record immediately on being informed vide the Advocate's letter dated 29th July, 2014. It was also submitted that the plaintiff has not even bothered to bring on record the fact that defendant no.24 who is the father of the plaintiff no.1 died on 28th September, 2011 and even his name is yet to be deleted. Ms. Iyer submitted that this is the conduct of the plaintiffs and hence the suit should be deemed to have abated. Ms. Iyer also submitted that if we have to accept what Mr. Nankani submitted that 90 days period starts get triggered on 4th January, 2016, i.e., the date on which the pleader has informed the court about the death of defendant no.1 in view of provisions of Rule 10A of Order 22, then that would render all the other provisions of Order 22 redundant.

12 Mr. Mehta, counsel appearing for the legal heirs of defendant nos.8 & 18 adopted the submissions of Ms. Iyer.

13 The counsel for the applicants relied upon the following

judgments :-

- 1) *Vasant Jagannath Malkar-Teli & Ors. vs. Parvati Ananda Phatak & Ors.*¹;
- 2) *Qazi Abdul Quddus Qazi Abdul Rahim vs. Qazi Ghaziuddin S/o. Qazi Aminuddin & Ors.*²;
- 3) *Mithailal Dalsangar Singh & Ors. vs. Annabai Devram Kini & Ors.*³;
- 4) *Vasant Pandu @ Pandurang Birwatkar & Anr. vs. Shankar Dhondu Ghole & Anr.*⁴;
- 5) *Gangadhar & Anr. vs. Raj Kumar*⁵;
- 6) *Bapurao vs. Smt. Jamunabai & Ors.*⁶;
- 7) *Veena R. Rodkar vs. Rukmini wd/o. Vasudeo Narayan & Ors.*⁷

14 The counsel for the legal heirs of defendant nos.1,8 and 18
relied upon the following judgments :-

- 1) *Doddappa Maritammappa Basaput & Anr. vs. Erappa Mudakappa Navalli & Ors.*⁸;
- 2) *Atchut Upendra Raikar vs. Surya Upendra Raikar (since deceased) through his legal representatives*⁹;
- 3) *Sunil Gupta & Anr. vs. Nissim Samuel & Ors.*¹⁰;
- 4) *Katari Suryanarayana & Ors. vs. Koppiseti Subba Rao & Ors.*¹¹;

1. 2012 (6) MH.L.J.138

2. 1979 Mah.LJ.431

3. (2003) 10 SCC 691

4. 1995 (2) Mah. LJ 471

5. (1984) 1 SCC 121

6. (1983) 2 SCC 253

7. 1992 MH.L.J.606

8. AIR 1982 Karnataka 191

9 2006 DGLS(AHC) 179

10. Hon'ble High Court's order in Chamber Summons (L) No.436 of 2014 in Suit No.3238 of 1989 dated on 21st April, 2014

11. (2009) 11 SCC 183

5) *Vishnu Kanta (Smt.) vs. Jagdish & Ors.*¹²;

6) *T. Sarojamma alias Saroja Bai vs. Mohammed Khaleelur Rahiman & Ors.*¹³;

7) *Union of India vs. Ram Charan (deceased) through his legal representatives*¹⁴;

8) *State of Gujarat vs. Sayed Mohd. Baquir El Edross*¹⁵

15 What happens on the death, marriage and insolvency of parties is covered under Order 22 of Code of Civil Procedure. The rules relevant for the present purpose are Rule 4 (1, 2 & 3), Rule 9 and Rule 10A and they read as under :-

Rule 4. Procedure in case of death of one of several defendants or of sole defendant – (1) *Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.*

(2) *Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant ;*

(3) *Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.*

9. Effect of abatement or dismissal- (1) *Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.*

(2) *The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver*

12. 2007 DGLS(AHC) 19876

13. 1998 DGLC(AHC) 2180

14. AIR 1964 SC 215

15. 1981 SCC Vol.4

in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal ; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877 (15 of 1877), shall apply to applications under sub-rule (2).

[Explanation- Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.]

[10A Duty of pleader to communicate to Court death of a party- *Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death of the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist]*

16 The other legal provisions which are relevant are Article 120 & 137 of the Limitation Act which read as under :-

<i>Description of application</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
120 - Under the Code of Civil Procedure 1908 (5 of 1908), to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party	Ninety days	The date of death of the plaintiff, appellant, defendant or respondent, as the case may be.
137 - Any other application for which no period of limitation is provided elsewhere in this Division	Three years	When the right to apply accrues.

17 Mr. Nankani relied on *Vasant Jagannath Malkar-Teli Vs.*

Parvati Ananda Phatak (supra) and submitted that a highly technical and pedantic approach in such matters should be eschewed as ultimately the endeavour should be to see that a party is able to prosecute the remedy available in law on merits. He also submitted that even if the reasons mentioned does not appear to be satisfactory, the court should still take a very lenient approach and even if there is no prayer to set aside abatement, once prayer for bringing the legal representative is allowed, there is no need to have a separate prayer to set aside abatement.

18 Mr. Nankani, counsel for the applicants/plaintiffs seriously contended relying upon Order 22 Rule 10A of the Code that the appeal did not abate. According to Mr. Nankani it was incumbent upon the advocate for the defendant no.1 who had come to know about the death of defendant no.1 to inform the court about the death of the party and the court, thereupon, should give notice of such death to the petitioner. Since the advocate for the respondents had not informed the court, having come to know about the death of defendant no.1 and informed the court only on 4th January, 2016, time would run for the purpose of limitation only from the date of death or from the date of the knowledge of the death.

19 I am not able to agree with Mr. Nankani. The scope of Rule 10A of Order 22 of the Code does not have anything to do with starting point of limitation. It should be noticed that Rule 10A of Order 22 of the Code has been inserted by the Code of Civil Procedure (Amendment) Act, 1976, only for the purpose of reducing the complications that may arise by reason of the ignorance of the death of one party at a later stage of the suit or appeal. Rule 10A of Order 22 of the Code therefore, requires the advocate to inform the court if he comes to know about the death of the party, incase the other party is ignorant of the death of the other party, to facilitate him to make an application to bring the legal representatives of the deceased on record and thereby the delay in the progress of the proceedings could be effectively avoided. The duty of the advocate arises only if the other party is ignorant of the death of the deceased. If he has got knowledge of the death of the deceased, in that case, an application has to be filed by him, within the period prescribed by the Limitation Act to file such an application, to bring the legal representatives of the deceased party on record. Such period shall commence from the date of the death of the party. Rule 10A cannot, however, withhold the running of the period of limitation from the date of the death of the party. It will

not enable the other party, who has got knowledge of the death of the deceased, to file an application to bring the legal representatives of the deceased on record within 90 days from the date of informing the court about the death of the party by the advocate representing the other party and the issue of notice by the court. The party is not relieved of the burden to file an application from the date of the death or to explain the delay in making such an application, if there is delay in making such application. Under Article 120 of the Limitation Act, 1963 the starting point of limitation for filing an application to bring the legal representatives of the deceased on record is the date of the death of the party. If no application is filed within the period of limitation, the suit abates. The application has to be filed to bring the legal representatives of the deceased on record within 60 days from the date of abatement and if there is delay in making such an application the delay should be properly explained in the affidavit filed in support of the petition under Section 5 of the Limitation Act.

20 The scope of Rule 10A of Order 22 of the Code is limited in nature and it should not be construed as the starting point for running the period of limitation. Mr. Nankani, counsel for the applicants/plaintiffs is, therefore, not correct in his interpretation of

Rule 10A of Order 22 of the Code.

21 The Learned Single Judge of Karnataka High Court in *Doddappa Maritammappa Basaput & Anr. vs. Erappa Mudakappa Navalli & Ors.* (supra) has considered the scope of Order 22 Rule 10A of the Code holding :

“thus, it is clear that the said provision has been inserted to enable the Pleader to inform the court if he comes to know about the death of the party represented by him, with an object that in a case where the plaintiff, or the appellant, or the petitioner, as the case may be, is ignorant of the death of the defendant, or the respondent, as the case may be, it will facilitate him to make an application to bring the legal representatives of the deceased party on record and thereby the further delay in the progress of the proceedings may be avoided. But there is nothing in Rule 10A of Order 22 of the Code, which enables the court to hold that the limitation to file an application to bring the legal representatives of the deceased party on record commences from the date of informing the court about the death of the party by the counsel representing the said party or to hold that the plaintiff, or the appellant, or the petitioner, as the case may be, who is required to make an application to bring the legal representatives of the deceased party on record within period prescribed under law, is relieved of the burden to explain the delay in making such application. The starting point of limitation for filing an application to bring the legal representatives of the deceased on record is the date of the death of the party to the proceeding (vide Article 120 of the Limitation Act, 1963). The suit or the appeal or the petition, as the case may be, abates on the expiry of 90 days from the date of the death of the party to the proceeding if no application to bring the legal representatives on record is made within that period”.

This has also been followed by a Single Judge of Andhra Pradesh High Court in the matter of *T. Sarojamma alias Saroja Bai vs. Mohammed Khaleelur Rahiman & Ors.* (Supra).

I am in respectful agreement with the view of both the Learned Judges.

22 In the instant case the advocate for the plaintiffs was informed by the advocate for the defendant no.1 regarding the demise of defendant no.1 vide a letter dated 29th July, 2014, delivered on 31st July, 2014 and admittedly so. Hence Order 22 Rule 10A of the Code does not come into play.

23 The following propositions emanate from the judgments relied upon by both the parties :-

(a) under Article 120 of the Limitation Act, 1963 the starting point of limitation for filing an application to bring the legal representatives of the deceased on record is the date of the death of the party and if no application is filed within the 90 days period of limitation, the suit abates;

(b) an application has to be filed to bring the legal representatives of the deceased on record within 60 days from the date of abatement and if there is delay in making such an application, the delay should be properly explained in the affidavit filed in support of the petition under Section 5 of the Limitation Act;

(c) the scope of Rule 10A of Order 22 of the CPC is limited in nature and it should not be construed as the starting point for

running the period of limitation;

(d) in such type of cases liberal view is required to be taken as the rules of procedure are enacted to further the cause of justice and not to create obstacles in their way or to impede it. The Code of Procedure is designed to facilitate justice and further its ends, not a penal enactment for punishment and penalties; not a thing, designed to trip people up.

24 As regards the submission of the counsel for the defendant nos.1,8 and 18 that the plaintiffs and the defendants were related, both lived in the same city of New Delhi and there were multiple obituaries published in Hindustan Times and Times of India both widely circulated newspapers and therefore, the plaintiffs are deemed to have been aware about the death of defendants soon after the same were published in the obituary, it must be clarified that none of the counsels submitted that the plaintiffs attended the funeral or the condolence meeting. The counsels were asking the court to presume knowledge of the plaintiffs about the death on the basis of newspaper obituaries. There was no evidence submitted to show that the plaintiffs otherwise knew about the death of the defendant nos.1,8 and 18.

25 I am unable to appreciate that litigants are presumed to read newspapers so as to be aware of the death of prominent citizens from the obituary columns of leading national newspapers. To decline

to grant the relief on this ground does not carry conviction. Courts can not refuse to grant relief on assumptions and presumptions. This submission of the defendants have to be rejected.

26 There has been, as could be seen from the discussions above, a considerable delay. The date of reckoning is 29th July, 2014, the date on which the letter was written by the defendants' advocates to the plaintiffs' advocates and therefore, the delay is about 495 days.

 Therefore, has the plaintiffs shown any sufficient cause, even if the court has to apply a very liberal approach, is the point that requires to be considered.

27 As regards reasons for delay in making this application to bring the legal heirs of defendant no.1 on record, if one considers the affidavits filed by the plaintiffs, it is totally silent.

 I am not even looking at the hyper technical approach for prayer for condonation of delay to set aside the abatement of the suit. I am looking at whether there is atleast any whisper of an explanation in any of the affidavits. The answer is no. The affidavits of the plaintiffs does not even mention anywhere that there has been a delay. There is no cause whatsoever shown for condoning the delay let

alone whether it is sufficient or otherwise. During the course of arguments, the counsel for the plaintiffs stated that they had addressed a letter dated 11th August, 2014 to the advocates for the defendant no.1 in response to the letter dated 29th July, 2014 asking to provide details of the arrangement based on which they have given names of only four legal heirs and there was no reply and hence they took this chamber summons in 2016. I must hasten to add, this is not mentioned in the affidavits. Admittedly there has been no reply to the letter dated 11th August, 2014. In the letter of 29th July, 2014 the advocate for the defendant no.1 has given the names of the legal heirs of defendant no.1. That situation has not changed even when the plaintiffs took out the present chamber summons.

Therefore, nothing prevented the plaintiffs from taking out the present chamber summons soon after the letter dated 29th July, 2014 was received. The plaintiffs could have brought on record the legal heirs mentioned in the letter dated 29th July, 2014 and if later it came to light that some other legal heirs were also required to be included, the plaintiffs could have applied to bring those on record at that stage. It is well settled that an application which is subsequently filed to bring some of the legal representatives of the deceased

defendants on record when the others have been brought on record already within the period of limitation would not be governed by the period of limitation laid down in Article 120 of the Limitation Act but it would be governed by the period of limitation laid down in Article 137 of the said act, this period being three years (*Qazi Abdul Quddus* (supra)).

28 Therefore, the plaintiffs not having shown any cause, let alone showing sufficient cause, I am not able to even take a liberal non pedantic view. My hands are tied. Therefore, the chamber summons so far as to bring on record the legal heirs of defendant no.1 has to be rejected.

29 As regards bringing the legal heirs of defendant nos.8 & 18 on record, though the said defendants expired on 8th October, 2012 and 26th January, 2011, respectively, it was brought to the notice of the court only on 4th January, 2016 on which date the plaintiffs also came to know. In the case of these two deceased defendant nos.8 and 18, it is not the case of the legal heirs that they wrote a letter, as was done by the advocates for the defendant no.1.

Therefore, the chamber summons as regards to bringing on record the legal heirs of defendant nos.8 and 18 is allowed.

30 As regards the deletion of defendant nos.2,,9,13, 15 and 24, the same is also allowed.

31 The amendments to be carried out and copy of the amended plaint to be served within two weeks from today.

32 The chamber summons accordingly stands disposed.

33 The counsel for the defendant nos.8 to 10 seeks stay of this order. Stay rejected.

(K.R.SHRIRAM,J)