

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 52 of 2017**

Bahadur Singh, S/o Late Jagmohan Singh, aged about 55 years,
Occupation Agriculturist, R/o Chhote Atarmuda, Raigarh, Tahsil
and District Raigarh (C.G.)

---- Petitioners**Versus**

R.P. Sarkar (dead) through LR's.

1. Sushant, S/o Late R.P. Sarkar
2. Prashant, S/o Late R.P. Sarkar
3. Dinesh, S/o Late R.P. Sarkar

All are R/o Chhotemuda, Kelo Vihar, Raigarh, District Raigarh
(C.G.)

4. State of Chhattisgarh, through Collector Raigarh, District Raigarh
(C.G.)

---- Respondents

For Petitioner : Mr. Vivek Kumar Tripathi, Advocate.
For Respondents 1 to 3: Mr. M.K. Jaiswal, Advocate.
For Respondent No. 4 : Mr. S. Majid Ali, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****15/05/2017**

(1) This petition is directed against the order dated 04.10.2016, by which learned Additional Sessions Judge has dismissed the appeal affirming the order of trial Court dated 12.03.2015.

(2) Learned counsel for the petitioner would submit that the defendant No. 1 died on 22.11.2011 and the petitioner made an application for substitution on 20.03.2012, as such there is only delay

of seven days in filing the application as the petitioner came to know about the death of respondent No. 1 on 13.12.2011 only and, therefore, substantive application ought to have been allowed by the trial Court as well as by the appellate court.

(3) On the other hand, counsel for the state opposes the writ petition.

(4) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(5) Fact remains that the petitioner/plaintiff filed a suit for declaration of title and recovery of possession. During the course of trial, defendant No. 1 died on 22.11.2011 and the petitioner came to know about his death on 13.12.2011 and, thereafter, filed an application for substitution of defendant No. 1 on 20.03.2012 with a delay of seven days; that has been rejected by the trial Court and the appellate Court.

(6) In the matter of **Banwari Lal (D) by LRs. & another Vs. Balbir Singh¹**, their Lordships of the Supreme Court have held that the provisions of Order 22, CPC are not penal in nature, it is rule of procedure and substantial rights of parties cannot be defeated by pedantic approach by observing strict adherence to procedural aspect of Law. Para 10 of the report states as under:-

“**10.** Provisions of Order XXII, 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: (AIR 2003 SC 2588), a Five Judge Bench of this Court held as under :-

“**26.** Laws of procedure are meant to regulate

¹ AIR 2015 SC 3573

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 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 even de hors 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....”

- (7) In view of above legal position, orders impugned passed by trial court as affirmed by the appellate Court are set aside. The petitioner is directed to file application for condonation of delay/setting aside abatement/substitution and, in turn, the trial Court shall consider and

decide the same expeditiously preferably within a further period of 15 days from the date of receipt of copy of this order.

(8) Accordingly, the writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-