

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 699 of 2014**

1. Karan Singh (Dead) Through Lrs: Akhtari Begam Wd/o Md. Nawab, Aged About 40 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
2. Md. Iqbal S/o Nawab, Aged About 25 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
3. Mohd. Akbar S/o Nawab, Aged About 20 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
4. Sultana Begam D/o Nawab, Aged About 30 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
5. Mohd. Saifq S/o Md. Habib, Aged About 55 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
6. Md. Rafiq (Dead) Through Lrs
6 . (a) Kanij Parvin Aged about 48 Years Wd/o Mohd. Rafiq, R/o Gurunanak Chowk, Torwa, Police Station Torwa, District Bilaspur, Chhattisgarh
6 . (b) Reshmi Khan Aged about 25 Years D/o Late Mohd. Rafiq, R/o Gurunanak Chowk, Torwa, Police Station Torwa, District Bilaspur, Chhattisgarh
6 . (c) Shahin Ansari Aged about 23 Years D/o Late Mohd. Rafiq, R/o Gurunanak Chowk, Torwa, Police Station Torwa, District Bilaspur, Chhattisgarh
6 . (d) Mujibur Rahman Aged about 20 Years S/o Mohd. Rafiq, R/o Gurunanak Chowk, Torwa, Police Station Torwa, District Bilaspur, Chhattisgarh
7. Md. Salim S/o Md. Habib, Aged About 38 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
8. Md. Kayum S/o Md. Habib, Aged About 35 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
9. Md. Iliyash S/o Md. Habib, Aged About 32 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
10. Md. Yunus S/o Md. Habib, Aged About 30 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
11. Md. Yusuf S/o Md. Habib, Aged About 25 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
12. Parvin Begam D/o Md. Habib, Aged About 20 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh
13. Kaniz Begam D/o Md. Habib, Aged About 43 Years R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, District Bilaspur, Chhattisgarh

---- Applicants

Versus

1. Smt. Laxmin Bai W/o Jangbahadur Singh, R/o Barideeh, Tahsil Bilaspur, District Bilaspur, Chhattisgarh
2. Chandrabhan Singh (Dead) Through Lrs
2 . (a) Manoj Singh Aged about 32 Years S/o Late Chandrabhan Singh, R/o Barridih, Post Manjhwari, P.S. Ratanpur, Tahsil And District Bilaspur, Chhattisgarh
2 . (b) Mukesh Singh Aged about 27 Years S/o Late Chandrabhan Singh, R/o Barridih, Post Manjhwari, P.S. Ratanpur, Tahsil And District Bilaspur, Chhattisgarh

---- Respondents

For Applicants : Shri J.K. Shastri, Advocate
 None for respondents 1, 2a 7 2b though represented.
 Respondent 3 died and deleted.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

12.1.2017

1. Heard on I.A.No.1/2014 for condonation of delay in filing the application under Order 22 Rule 9 CPC.
2. Learned counsel for the applicants would submit that though there is delay of 726 days in filing the instant MCC for restoration of Second Appeal No.405/95 (old number), 251/11 (new number) dismissed for want of prosecution on 27.6.2012 as the applicants had preferred the MCC No.731/2013, the same was dismissed summarily by the Division Bench of this Court on 5.8.2014. As per the said order the Bench observed that "on account of death of appellant No.2- Nasiman Bee, virtually the Second Appeal has abated by operation of law, therefore, the applicants are required to file appropriate application for setting aside the abatement before the Bench having roster". After the dismissal of said MCC summarily, the applicants had preferred the instant MCC under Order 22 Rule 9 CPC to set aside the abatement of the appeal on account of death of said appellant

Nasiman Bee along with condonation of delay, hence, the delay occurred is unintentional and bonafide as the applicants had already shown their intention to prosecute the said second appeal on its merits and for this they have filed the MCC No.731/2013. Hence, looking to the entire facts and circumstances, delay of 726 days may be condoned and the appeal may be admitted for hearing.

3. Perused the entire material available on record and the order of dismissal of Second Appeal dated 27.6.2012 and the dismissal of MCC No.731/2013 dated 5.8.2014.

4. On due consideration, in the interest of justice and the intention of the applicants to prosecute the appeal, the fact that other appellants have also died as surfaced in the other interim application I.A.No.7/2017 with this, it would be appropriate to decide the matter though long pending on its merits and also as the applicants had already knocked the door of this court to set aside the dismissal of Second Appeal in MCC No.731/2013. On due consideration, delay of 726 days is condoned.

5. The MCC is admitted for consideration.

6. Also heard the matter finally.

7. In the instant MCC, the applicants have filed I.A.No.5/2017 under Order 22 Rule 4 CPC, I.A.No.6/2017 under Section 5 of the Limitation Act so as to condone the delay after the death of Chandrabhan Singh and Smt. Bipat Kunwar, respondent 3 dies issue less and respondent 2 left 2 Lrs, Manoj Singh and Mukesh Singh those are already substituted in the instant MCC. It is submitted on behalf of the applicants that both the applications may be allowed and in the cause title of the said Second Appeal, respondents 2 and 3 may be deleted and in place Respondents 2a Manoj and 2b Mukesh be substituted after condoning the delay. The applicants do

not know the date, month and year of the death of appellants 2 and 3 and the Lrs of respondent 2 though represented in the present matter, but never disclosed the date, month and year of death of respondent 2.

8. On behalf of applicants, I.A.No.7/2017 under Order 22 Rule 3 read with Section 151 CPC is also filed along with I.A.No.8/2017 under Section 5 of the Limitation Act whereby and whereunder the applicants have prayed that as appellants 1 and 3 in the second appeal have died, appellant 2 Nasiman Bee is also died, present appellants are Lrs of A2- Nasiman Bee and as the Lrs of A1 and A3 are not interested to prosecute the said second appeal also in addition present applicants do not know when appellants 1 and 3 have died, hence, by allowing both the 2 applications the cause title of the Second Appeal may be amended and after deletion of names of appellants 1 and 3 and also A2, Lrs of A2 may be arrayed as appellants as A2a to A2p after condoning the delay for impleading that as party and the court may set aside the abatement, if any, after the death of appellant 2 Nasiman Bee. Further prayed that the said second appeal may be restored to its original number permitting the applicants to implead and substitute the aforementioned amendment in the second appeal.

9. Perused the entire matter.

10. On due consideration, the second appeal abated on account of death of appellant No.2 is hereby set aside. Delay in filing the applications for substitution of Lrs of appellant No.2 is hereby condoned. The applicants are permitted to amend the cause title as prayed, i.e. by deleting the name of the appellants and substituting the applicants as appellant 2a to 2p as the Lrs of appellant 2. The applicants are permitted to amend the cause title of said second appeal by deleting the name of respondents 2 and 3 from the cause title. Further allowed to implead the name of LR of respondent 2 as 2a and 2b mentioned in I.A.No.5/2017. The prayer of the applicant is also allowed

and the dismissal of second appeal on 27.6.2012 on account of non-prosecution, same is restored to its original number.

11. No order as to cost.

12. The applicants are directed to amend the cause title within a month from today. It is further observed that if any fact is contrary to the submission made on behalf of the applicants are surfaced in hearing of the said second appeal the court may dispose of and decide the same in accordance with law.

Sd/

(Chandra Bhushan Bajpai)
Judge