

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 89 of 2016**

1. Narayan Singh (Since Dead) Through Lrs Smt. Trilochan Kour Through: The Lrs: Smt. Trilochan Kour Widow Of Late Narayan Singh, Aged About 85 Years, R/o Thana Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh
2. Indrajeet Singh (Since Dead), Who Died On 16.05.2014 Leaving Behind Following Legal Heirs:
2 . (a) Chandra Kour Aged about 55 Years Wd/o Late Indrajeet Singh, R/o Police Station Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh
2 . (b) Lakki Singh Aged about 30 Years S/o Late Indrajeet Singh, R/o Police Station Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh
2 . (c) Harmit Singh Aged about 27 Years S/o Late Indrajeet Singh, R/o Police Station Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh
3. Manjeet Singh S/o Late Narayan Singh, Aged About 66 Years R/o Police Station Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh
4. Amrik Singh S/o Late Narayan Singh, Aged About 62 Years R/o Police Station Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh
5. Paramjeet Singh S/o Late Narayan Singh, Aged About 50 Years R/o Police Station Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh
6. Harbhajan Kour W/o Late Ranjeet Singh, Aged About 65 Years R/o Police Station Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh
7. Harminder Singh S/o Late Narayan Singh, Aged About 50 Years R/o Police Station Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh
8. Jasbir Kour D/o Late Narayan Singh, Aged About 52 Years R/o Plot No. 159, Guru Nanak Pura, Nagpur (M.H.) - 17
9. Harbhajan Kour D/o Late Narayan Singh, Aged About 55 Years R/o C/o Harjinder Singh, Arka Chhetrapara, Kondagaon, Jagdalpur, Chhattisgarh
10. Surender Kour D/o Late Narayan Singh, Aged About 50 Years R/o Qtr. No.3, New Lay Out, Sitaram Dera, Post Agnilo, Jamshedpur (Jharkhand)

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- State Of Madhya Pradesh (Now Chhattisgarh) , Through: The Collector, Raigarh, Chhattisgarh

---- Respondent

For Applicants	:	Smt. Hamida Siddiqui, Advocate
For Respondent	:	Shri Ramakant Mishra, Deputy Advocate General with Smt. Shobha Kashyap, Deputy G.A.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****03/08/2017**

1. Heard on I.A.No.01/2016 filed under Order 22 Rule 9 read with Section 151 of the C.P.C. and I.A.No.02/2016 filed under Order 22 Rule 3 of the C.P.C as well as application for condonation of delay in filing the application for setting aside the abatement. These are the applications filed by the applicants being legal representatives of deceased sole appellant, Narayan Singh, who expired on 02.06.1994. It is submitted therein that they were not aware with regard to the said fact, and therefore, could not file the appropriate applications in time. It is submitted further that when the Corporation threatened to demolish their shop constructed on a disputed land, then they immediately contacted the counsel and only after knowing the dismissal of appeal as abated, the instant applications have been filed. The delay has thus occurred bona fide and there is no mala fide intention behind it, therefore, the same may be allowed.

2. Shri Ramakant Mishra, Deputy Advocate General has opposed the aforesaid applications orally and stated that the applications for setting aside the abatement under Order 22 Rule 9 has been made after so many years and that too without assigning sufficient reasons, therefore, the same should not be allowed. He further submits that the application prescribed under Section 5 of the Limitation Act has not been made separately. He, therefore, submits that the applications deserve to be rejected.

3. I have considered rival submissions of the parties and examined the above applications filed in this regard.

4. It is true that separate application as required under Section 5 of the Limitation Act was not made, but, if we examine the application filed on 16.01.2016, it is very clear that the application for condonation of delay in setting

aside the abatement is also there, although specific provision has not been mentioned therein. Even otherwise, this is an appeal, which was admitted before the enforcement of M.P.Reorganization Act, 2000, on 19.01.1994 and thereafter, the matter was listed from time to time before the Madhya Pradesh High Court. When the matter was listed before this Court, it was observed vide order dated 25.08.2010 that since the appellant has already expired in the year 1994, therefore, the appeal abates and as a consequence, the appeal was dismissed as abated. Having considered the reasonings assigned in the applications, in peculiar circumstances of the case, the same deserve to be allowed as I do not find any mala fide intention in filing these applications. Accordingly, the applications are allowed and the abatement of this appeal occurred on account of death of deceased sole appellant is consequently set aside.

5. Accordingly, M.C.C. is allowed and the Second Appeal No. 353/1992 is restored to its original number. The applicants, who are the legal representatives of deceased sole appellant, are hereby permitted to be substituted in place of sole deceased appellant in the cause title of memo of appeal. Registry is directed to list the appeal for final hearing accordingly.

Sd/-

(Sanjay Agrawal)
Judge