

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 1032 of 2015**

Ramayan Prasad Soni S/o Ramsharan Sonar, Aged About 73 Years
 R/o Village Baloda, P. S. Baloda, Tahsil Janjgir, District Janjgir Champa
 (Chhattisgarh).....(Appellant)

---- Applicant**Versus**

1. Smt. Dulin Bai (Since Dead)

1. (A) Ram Kumar Kashyap Aged about 50 Years S/o Late Shree Mathura Prasad Kashyap, R/o Village Jhapeli, Tahsil Janjgir, Police Station Baloda, District Janjgir Baloda, District Janjgir Champa (Chhattisgarh)

2. Dinesh Kumar Dewangan S/o Ramkrishan Dewangan, R/o Jawalpur, Tahsil Baloda, Police Station Baloda, District Janjgir Champa (Chhattisgarh).....(Respondent)

---- Respondents

For applicant	Mr. Ramayan Prasad Soni, Adv.
For proposed R-1A	Mr. Kshitij Sharma, Adv.
For R-2	Mr. R.S. Patel, Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****28/04/2017**

1. Heard on I.A. No. 2/2015 under order 22 Rule 4 of the CPC, I.A. no. 3/2016 under Section 5 of the Limitation Act for condonation of delay in filing said interim application and I.A. No. 5/2017 under Order 22 Rule 9 of the CPC.

2. Second Appeal No. 510/2007 has been dismissed as abated on 13-10-2015. In the order passed on 13-10-2015, this court in para 7 directed as under :-

“7. The appellant may file suitable application for substitution, condonation of delay, for setting aside the abatement, if any, if they so advised in a separate proceeding prescribed under the law.”

3. As per interim application, notice issued to sole respondent Smt. Dulin Bai return unserved on 8-7-2012 due to death of sole respondent on July 2012. Return of said notice is the source of knowledge of present applicant regarding death of sole respondent. In

absence of any other material against all the three aforementioned interim applications and as per direction of this Court on 13-10-2015 passed in SA No. 510/2007, the applicant prayed for condonation of delay in filing the application for substitution of LRs of the sole respondent died, also prayed to set aside the abatement after death of sole respondent and also prayed for substitution of proposed respondent after deleting name of sole respondent and also prayed that instant MCC may be allowed and abatement may be set aside. SA No. 510/2007 may be restored to its original number.

4. On due consideration, instant MCC preferred by the applicant is hereby allowed. Abatement on account of death of sole respondent is hereby set aside. I.A. No. 2/2015 is hereby allowed and delay in filing the application to set aside abatement is hereby condoned. The applicant is directed to delete the name of sole respondent and to substitute the name of proposed respondent/non-applicant in the matter in the cause title of SA within 2 weeks from today.
5. With these condition, instant MCC is hereby allowed as prayed .
6. No order as to costs
7. After necessary deletion and substitution in the said SA, Registry is directed to list the said SA for further hearing as per provisions of law.

Sd/-
(Chandra Bhushan Bajpai)
Judge