

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (227) No. 54 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.)  
(Plaintiff)

**----Petitioner****Versus**

1. Reshamlal Pradhan (dead) through LR's

1(a) Laxminarayan Gupta, S/o Reshamlal.

1(b) Jaswant Gupta (Pradhan), Wd/o Reshamlal.

Both are R/o Kelo Vihar Colony, Tahsil and District Raigarh (C.G.)

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

**---- Respondents/Defendants**

For Petitioner : Shri Vivek Kumar Tripathi, Advocate

For respondents No. 1(a) & 1(b) : Shri Arvind Shrivastava, Advocate.

For Respondent No. 2 : Shri Rahul Tamaskar, Advocate.

**Hon'ble Shri Justice Sanjay K. Agrawal****Order On Board****27/11/2018**

1. In a suit filed by the petitioner / plaintiff, sole respondent – Reshamlal Pradhan died on 9.4.2010. On behalf of defendants, it was informed to the trial Court on 10.05.2010 that he has died but ultimately plaintiff filed applications under Order 22 Rule 4 of the CPC and under Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act for bringing legal representatives of deceased respondent – Reshamlal Pradhan on record after setting aside abatement and condoning the delay of 49 days in filing the applications, which were rejected by the trial Court by order dated 9.3.2015. Appeal preferred thereagainst before the Misc. Appellate Court was also dismissed by the impugned order affirming the order of trial Court, against which instant writ petition has been filed questioning that order.

2. I have heard learned counsel appearing for the parties.
3. The question for consideration would be whether both the courts below were justified in holding that the plaintiff has not explained the delay of 49 days in filing the aforesaid applications.
4. Before proceeding further, it would be appropriate to notice the decision of the Supreme Court in this regard.
5. In the matter of **Banwari Lal (Dead) by legal representatives and another Vs. Balbir Singh**<sup>1</sup>, their Lordships of the Supreme Court has held that the procedure is meant only to facilitate the administration of justice and not to defeat the same. Relevant paragraphs of the report state as under :-

“9. Provisions of Order 22 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 Amajit Singh Kalra v. Pramod Gupta**<sup>2</sup>, a five- Judge Bench of this Court held as under :

“26. Laws of procedure are meant to regulate 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

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1 (2016) 1 SCC 607

2 (2003) 3 SCC 272

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 a 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 share 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, allowed the applications for impleadment 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."*

*(emphasis supplied)*

10. In **Sital Prasad Saxena v. Union of India**<sup>3</sup>, it was observed that the rules of procedure under Order 22 CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On

sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained.

6. Reverting to the facts of the case in light of principle of law laid down in above-cited judgment, it is quite vivid that though it was intimated on behalf of the defendants on 10.05.2010 to the trial Court that sole respondent – Reshamlal Pradhan died on 9.4.2010 but anyhow plaintiff traced his legal representatives and their address and thereafter moved the aforesaid applications with a delay of 49 days. Reasons assigned by the plaintiff for condoning the delay in filing the applications appears to be sufficient and valid, which deserves acceptance as the suit was filed for declaration of title and posses, which has to be decided on merits.

7. In view of foregoing, the application for substitution of legal representatives of respondent – Reshamlal is allowed, abatement is set-aside and the delay in filing the applications are hereby condoned. The matter is remitted to the trial Court to implead the legal representatives of sole respondent- Reshamlal and proceed further with the trial. Since the suit was instituted in the year, 2013, the trial Court is directed to expedite the trial.

8. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

9. A copy of this order be sent to the trial Court through concerned District Judge directly as well as by FAX / E-Mail.

Sd/-

(Sanjay K. Agrawal)  
Judge



