

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P(227) No. 249 of 2014**

1. Anadi Vishwakarma S/o Late Shri Ramsajiwan Vishwakarma, aged about 34 years, R/o Banaras Road, Ambikapur, Post Office Fundurdihari, Tahsil and Police Station Ambikapur, District Surajpur (C.G.)
2. Alok Kumar Vishwakarma, S/o Late Shri Ramsajiwan Vishwakarma, aged about 38 years, R/o Banaras Road, Ambikapur, Post Office Fundurdihari, Tahsil and Police Station Ambikapur, District Surajpur (C.G.)
3. Smt. Ramkali Vishwakarma, W/o Late Shri Ramsajiwan Vishwakarma, aged about 58 years, R/o Banaras Road, Ambikapur, Post Office Fundurdihari, Tahsil and Police Station Ambikapur, District Surajpur (C.G.)
4. Smt. Alaka Vishwakarma, D/o Late Shri Ramsajiwan Vishwakarma, aged about 26 years, R/o Jawahar Navodaya Vidyalaya, Bodwara, Tahsil Bodwara, District Katanai (M.P.)

---- Petitioners/Defendants**Versus**

1. Mohammad Sharif S/o Abdul Sattar, aged about 38 years, Occupation Service, R/o Pratapnagar (Navapara), Ambikapur, Tahsil and Police Station Ambikapur, District Surajpur (C.G.)
2. Gaya Ram Singh, S/o Ramkripal Singh, aged about 32 years, Occupation Service, District and Sessions Court, Ambikapur, District Surguja (C.G.) (at present dead)

---- Respondents/ Plaintiffs

For Petitioners : Mr. Subhash Yadav, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****13/11/18**

1. By the impugned order dated 28.01.2014, the application filed by

the petitioners/defendant (legal representatives of defendant No. 1) under Order 22 Rule 9 CPC for holding the suit to be abated has been dismissed by the trial Court, questioning that order this writ petition has been preferred.

2. Mr. Subhash Yadav, learned counsel for the petitioners submits that the impugned order is unsustainable and bad in law as the Defendant No. 2 died on 19.03.2004 and the application for substitution was filed on 21.08.2013, as such the suit has already been abated and trial Court is unjustified in rejecting the application and not holding that suit has abated.

3. I have heard learned counsel for the petitioners.

4. The trial Court has clearly held that defendant No. 2 has filed the written statement and thereafter, proceeded *ex-parte* and plaintiff has not claimed any relief and as such he is a formal party in the suit.

5. At this stage it would be appropriate to notice Order 22 Rule 4(4) of CPC which states as under :-

“O.22 R.4- Procedure in case of death of one of several defendants or of sole defendant.-

(1) to (3) xxx xxx xxx

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such

defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) xxx xxx xxx”

The above stated provision gives the power to Court to exempt the plaintiff from substituting the legal representatives of any such defendant who has failed to file written statement or who having filed it, has failed to appear and contest the suit at the hearing.

6. The Supreme Court in the matter of **Mata Prasad Mathur v. Jwala Prasad Mathur**¹ considered the legislative history of Order 22 Rule 4(4) CPC and held that Order 22 Rule 4(4) has been incorporated to expedite the process of substitution of LR's of non-contesting defendants. It was held in Para-10 as under :-

“Grant of exemption in that view is only a matter of maintaining procedural rectitude more than any substantial adjudication of the matter in controversy. This Court has at any rate adopted a liberal approach in setting aside abatement of suits.”

7. Reverting to the facts of the present case, it is quite vivid that defendant No. 2 after filing of written statement proceeded ex-parte and did not appear further to contest the suit and as such it was fit case to invoke Order 22 Rule 4(4) of CPC and as such, grant of exemption by trial Court exempting the necessity of bringing the LR's of defendant No. 2 is fully justified. Even otherwise, no relief has been claimed against defendant No. 2 and he is a formal party.[see AIR 1976 SC 1786

1 (2013) 14 SCC 722

(Mangalsingh and others v. Smt. Rattno by her legal representatives and another)].

8. In view of the aforesaid legal position, I do not find any merit in the writ petition.

9. Accordingly, the writ petition deserves to be and is hereby dismissed with no order as to cost(s).

10. A copy of this order be sent to the trial Court through the concerned District Judge for needful and compliance.

SD/-

(Sanjay K. Agrawal)
Judge