

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 475 of 2018**

1. Smt Narmada Bai W/o Late Firtu Ram, Aged About 70 Years
2. Jai Prakash Baghel, S/o Late Firtu Ram, Aged About 56 Years
3. Chandrapal Baghel, S/o Late Firtu Ram Aged About 48 Years
4. Lakhan S/o Late Firtu Ram Aged About 40 Years
5. Chandrasen, S/o Late Firtu Ram, Aged About 30 Years
6. Basant Baghel, S/o Late Firtu Ram, Aged About 26 Years

All R/o Tivarta, Sub Tahsil Dipka, District- Korba Chhattisgarh, Present Address- Bhadrapara, Balco Nagar, Tahsil And District- Korba Chhattisgarh

---- **Petitioners**

Versus

1. Jamila Bai W/o Late Agar Singh, Aged about 58 years, R/o Risda, Shantinagar, Balconagar, Tahsil And District- Korba Chhattisgarh, Present Address- E.W.S. - 198- 205, Niharika Colony, M.P. Nagar, Korba, Tahsil And District- Korba Chhattisgarh
2. State of Chhattisgarh Through- The Collector, Korba, Tahsil And District- Korba Chhattisgarh
3. Smt. Kadam Bai, W/o Late Bisahu Ram, Aged About 50 Years Caste- Satnami, R/o Tivarta, Sub Tahsil Dipka, District- Korba Chhattisgarh, Present Address- Bhadrapara, Balco Nagar, Tahsil And District- Korba Chhattisgarh

---- **Respondents**

For Petitioners	:	Shri Alok Kumar Dewangan, Advocate
For Respondents / State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18/05/2018

1. The present petition is against the order dated 23.04.2018, wherein an application filed in an appeal under Order 22 Rule 3 was dismissed.

2. Learned counsel for the petitioners submits that initially one suit was filed by Firtu Ram, which was decreed in the month of March 2016. Thereafter, the appeal was preferred on 28.03.2016 and during the pendency of the appeal, Firtu Ram died on 20.10.2016 and thereafter on 18.05.2017 an application under Order 22 Rule 3 CPC was filed, which was dismissed. He further submits that simply because the application for condonation of delay under Section 5 of the limitation Act was not attached, the application could not be dismissed.
3. The entire submission made by learned counsel for petitioners is misconceived. The abatement is automatic, the moment the statutory time expires to bring the legal heirs the proceedings abates. To set aside the abatement, the petitioner, if so advised, may file suitable application before the competent Court, wherein the appeal is pending.
4. The petition has no merits. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu