

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.219 of 2019**

1. Sapan Kumar Chakrawarty, S/o Late Manas Ranjan Chakrawarty, aged about 66 years,
2. Tapan Kumar Chakrawarty, S/o Late Manas Ranjan Chakrawarty (died) through his Lrs:

1. Smt. Sujata Chakrawarty Wd/o. Late Tapan Kumar Chakrawarty, aged-47 years,

2. Abhinav Chakrawarty, S/o. Late Tapan Kumar Chakrawarty, aged 24 years

3. Ankita Chakrawarty, D/o. Late Tapan Kumar Chakrawarty, aged 22 years,

All R/o. Qtr.No.2/F, Road-21, Sector-06 Bhilai Nagar, Tahsil and District Durg (CG)

---- Petitioners**Versus**

1. Senior Divisional Personnel Officer, South East Central Railway, Bilaspur Division, Bilaspur (CG)
2. Public At Large

---- Respondents

For Petitioners	:	Mr.Rajendra Kumar Patel, Advocate
For Respondent No.1	:	Mr.H.S.Ahluwalia, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****20/03/2019**

1. Sapan Kumar Chakrawarty and Tapan Kumar Chakrawarty filed an application under Section 372 of the Indian Succession Act, 1925 (hereinafter called as 'the Act of 1925') for grant of succession certificate against the respondents. During pendency of that application, Tapan Kumar

Chakrawarty died on 13.3.2018. His legal representatives Smt. Sujata Chakrawarty, Abhinav Chakrawarty and Ankita Chakrawarty filed an application for substitution on 26.7.2018 along with an application for condonation of delay in filing the application for setting aside abatement, which has been rejected by the succession Court by the impugned order, against which, this writ petition has been filed.

2. Learned counsel for the petitioners would submit that the succession Court has committed illegality in rejecting the application for substitution, as such, the impugned order is liable to be set aside.
3. On the other hand, learned counsel for respondent No.1 would support the impugned order.
4. I have heard learned counsel for the parties and perused the impugned order with utmost circumspection.
5. The question is whether the succession Court is justified in rejecting the application for substitution holding it to be barred by limitation.
6. Shri Tapan Kumar Chakrawarty died on 13.3.2018 and application for substitution along with application for condonation of delay was filed on 26.7.2018.
7. The Supreme Court in the matter of **Banwari Lal (dead) by**

Legal Representatives and another v. Balbir Singh¹ has

held that Order 22 CPC is not penal in nature and it is rule of procedure. It was observed 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 Amarjit Singh Kalra v. Pramod Gupta*², a five-Judge Bench of this Court held as under: (SCC pp. 300-01, para 26)

“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 of 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 into an effective adjudication and not to retard the 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 in tact 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 Jamabandhi itself of the shares 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 dehors the

1 (2016) 1 SCC 607

2 (2003) 3 SCC 272

cause for the delay in filing the applications keeping in view the serious manner it would otherwise jeopardize an effective adjudication on merits, the rights of other remaining appellants for no fault of them. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttle 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 Court to do real, effective and substantial justice.”

(emphasis supplied)

10. In *Sital Prasad Saxena v. Union of India*³, it was observed that the rules of procedure under Order 22 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 the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained.”

8. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the above-stated judgment (*supra*), it is quite vivid that application for substitution was filed with some delay, but yet sufficient cause was shown in not preferring the application within prescribed time and particularly the application filed under Section 372 of the Act of 1925 is not a suit.

9. In view of above, the impugned order is set aside. The

³ (1985) 1 SCC 163

application for condonation of delay in filing the application and for setting aside abatement is allowed and consequent thereto, application for substitution is also allowed. Let legal representatives of Tapan Kumar Chakrawarty be brought on record within 10 days from the date of their appearance before the succession Court. The succession Court is directed to conclude the case within 3 months from the date of receipt of certified copy of this order.

10. The writ petition is allowed to the extent indicated hereinabove. A copy of this Court be sent to the concerned succession Court by E-mail/fax. No cost(s).

Sd/-
(Sanjay K.Agrawal)
Judge

B/-