

**Court of Additional District & Sessions Judge IV, Siwan**

**Title Appeal no. 16 of 2011**

( Registration no. 943 of 2013 )

05-07-2022 -

Attendance filed on behalf of the appellants and respondent . The learned counsel of the appellants press petition dated 01-11-2021 under Order – 22 rule – 4 of CPC filed on behalf of the appellants to substitute the legal heirs of the deceased respondent no. 19 Bibi Rakeeboon and also press petition dated 01-11-2021 to expunge the name of the deceased respondent no. 2 Bibi Zaitun . The petitions has been served to the respondents but no rejoinder has been filed by the respondents inspite of giving last chance to the respondents on 29-03-2022 . On call none appears for the respondents , hence the respondents are debarred from filing rejoinder to the said petitions and the petitions are heard .

The learned counsel of the appellant submits that respondent no. 2 Bibi Zaitun wife of Late Md. Haroon died on 14-05-2011 and her legal heirs are already on record and prays for expunging the name of the deceased respondent no. 2 from Memo of Appeal . He further submits that respondent no. 19 Bibi Rakeeboon wife of Mumtaz died on 04-04-2021 leaving behind two sons as her legal heirs and due to Covid 19 the impugned petition could not be filed within the statutory period and as such petition under Section – 5 of Limitation Act has also been filed to condone the said delay . On said submissions the learned counsel of the appellants prays for allowing the impugned petition .

The copy of the impugned petitions were served to the respondents but they did not bothered to file rejoinder inspite of giving last chance to them on 29-03-2022 and as such the respondents were debarred from filing rejoinder and the impugned petitions have been heard .

The impugned petition dated 01-11-2021 for expunging the name of the deceased respondent no. 2 Bibi Zaitun is only in respect of expunging her name as all the legal heirs of the deceased respondent are on record as respondent no. 2 ( a ) and ( b ) and as such said petition is not barred under the law of limitation . Hence the impugned petition is allowed and the Office is directed to delete the name of the deceased respondent no. 2 Bibi Zaitun from Memo of Appeal .

The other petition dated 01-11-2021 has been filed to substitute the legal heirs of the deceased respondent no. 19 Bibi Rakeeboon . The respondent no. 19 died on 04-04-2021 while the impugned petition has been filed on 01-11-2021 . The appellants have also filed petition under Section – 5 of Limitation Act for condonation

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of delay with the cause that due to Covid 19 the appellants could not file the impugned petition for substitution . The Honorable Apex Court during the period of Covid 19 has waived the limitation and the impugned petition of the appellants falls within the said period and as such the question of limitation does not arise for the impugned petition . The right to sue does not survives alone against the surviving respondents and as such in the interest of justice the impugned petition dated 01-11-2021 filed by the appellants for substitution of the legal heirs of the deceased respondent no. 19 Bibi Rakeeboon is allowed . Office is directed to substitute the legal heirs of the deceased respondent no. 19 Bibi Rakeeboon as mentioned in the impugned petition dated 01-11-2021 In Memo of Appeal . The appellants to take step for issuing notice to the substituted respondents through Nazarat as well as through registered post .

Put up on 22-07-2022 for compliance of order and issuing of notice .

ADJ IV  
Siwan