

Ex.4/2017 dated 22.08.2022

The Decree Holder No.1 is said to have been died on 28.01.2022 and an application is filed Under Order 22 Rule 3 of the Civil Procedure Code. The fact that a litigants dies during the pendency of an execution petition would not mean that the provisions of Order 22 of the Civil Procedure Code would apply. Reference in this regard may be had to the dictum of our Hon'ble Apex Court in the case of **V. Uthirapathi v. Ashrab Ali, (1998) 3 SCC 148** wherein it has been held as under

15. It is clear, therefore, that if after the filing of an execution petition in time, the decree-holder dies and his legal representatives do not come on record — or the judgment-debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the execution court. If it remains pending and if no time-limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of the

decree-holder, for his legal representative to come on record at any time. The execution application cannot even be dismissed for default behind the back of the decree-holder's legal representatives. In case of death of the judgment-debtor, the decree-holder could file an application to bring the legal representatives of the judgment-debtor on record, at any time. Of course, in case of death of judgment-debtor, the Court can fix a reasonable time for the said purpose and if the decree-holder does not file an application for the aforesaid purpose, the Court can dismiss the execution petition for default. But in any event the execution petition cannot be dismissed as abated. Alternatively, it is also open to the decree-holder's legal representatives, to file a fresh execution petition in case of death of the decree-holder; or, in case of death of the judgment-debtor, the decree-holder can file a fresh execution petition impleading the legal representatives of the judgment-debtor; such a fresh execution petition, if filed, is, in law, only a continuation of the pending execution petition — the one which was filed in time by the decree-holder initially. This is the position under the Code of Civil Procedure.

Therefore even if under a wrong provision, an application is still filed to bring the legal representatives of the deceased person on record. Therefore given the mandate of the Hon'ble Apex Court, the application is allowed and the legal representatives of the deceased Decree Holder are permitted to come on record. DHR to make a note in the petition and file an amended petition. Call on 13.09.2022.

Civil Judge, Hnpura.