

UPBN010039542020



**In the Court of District Judge, Budaun.**  
**Rent Appeal- 03/2020**

**Haribabu**

**Vs**

**Pankaj Vashrey and others**

**Date- 27.10.2025**

Put up today. Upon call, learned counsel for both the parties have appeared. Heard the learned counsels in respect of application 265C which has been moved on behalf of the applicants/appellants with prayer to condone the delay caused in moving application 267C for substitution of legal representatives of the deceased sole appellant.

The application 265C has been moved on the grounds, briefly stated, that the appeal was filed by the sole appellant- Hari babu, whose counsel Shri Hari Pratap Singh Advocate made an endorsement on 09.03.2022 regarding the death of Haribabu on 15.02.2022 but the counsel did not inform the applicants regarding the necessity of taking steps for their substitution in place of the deceased sole appellant; upon coming to know of the same, the applicants contacted their counsel since they were unaware of the legal technicalities but even then the counsel did not do the needful; on 13.04.2022 , the then learned Presiding Officer rejected the application 22C moved by the earlier counsel Shri Hari Pratap Singh Advocate and also dismissed the appeal as having been abated; the anomaly occurred due to the negligence of the counsel, the applicants have not caused any wilful delay. Affidavit 266C has been filed in support of application 265C.

The OP has filed objection 290C, briefly stated, on the grounds that the endorsement regarding death of appellant was made by the then counsel Shri Hari Pratap Singh Advocate on 09.03.2022 upon which the court fixed 05.04.2022 for taking necessary steps regarding substitution; Sanjay, the son of appellant, does *pairavi* in the appeal on behalf of the appellant who appeared on 05.04.2022 and moved adjournment application; since according to rule 25(1) U.P. Act No. 13/1972 substitution has got to be made within 30 days of death, so the appeal was dismissed as abated; the substitution application moved by the applicants is not in accordance with law; Limitation Act is not applicable to the proceedings under this special act i.e. U.P. Act No. 13/1972.

Since application 265C has been moved for condonation of delay, so in view of the para 7 of objection 290C it is primarily to be seen as to whether the provisions of Section 5 of Limitation Act extend to this proceeding or not. In this respect, perusal of Section 35 of the Act reveals

that the legislature has very clearly provided that the provision of *inter-alia* Section 5 of Limitation Act shall *mutatis mutandis* apply to all proceeding under this act. The learned counsel for the OP has fairly conceded to such legal position.

So far as the grounds taken in application 265C are concerned, a perusal of the record of proceedings would suggest that on 09.03.2022 the then learned counsel for the appellant endorsed the fact of death of the appellant alongside the order sheet and thereafter 08.04.2022 and 13.04.2022 were fixed for doing the needful, short of which the appeal was dismissed as abated. However, vide order dated 25.07.2025, the order dated 13.04.2022 has been recalled and set aside. The applicants have taken the ground that they were unaware of the requirement regarding taking steps for substitution of legal representatives. The OP in his objection 290C has not assailed such contention of the applicants. As regards the indifference/negligence of the then counsel of appellants, by necessary implication it may be made out that despite having been afforded two opportunities, the learned counsel did not move the substitution application. So, such contention in application 265C also finds support.

As regards the period of delay, as per the date of death i.e. 09.03.2022, the necessary substitution application ought to have been moved by about 08.04.2022 which eventually got to be moved on 27.09.2022 as 267C. So, there is a delay of about more than 5 months. Although statutory mandates cannot be defeated by any stretch of consideration, still what law requires is generous construction of such mandatory legal provisions keeping in view the deliberate and malicious misconduct of the litigant, if so emerges. According to the foregoing discussion it is not apparent on the face of record that the appellants have made any wilful breach so far as, moving of substitution application is concerned. Even otherwise, the purpose of substitution of legal representatives of deceased litigant is the progress of the case. It has also to be borne in mind that when technicalities are pitted against substantive justice, the latter should be allowed to prevail and so far as may be possible the courts should lean in favour of disposal on merits rather than to shut out hearing and dismissal on technical grounds. Accordingly application 265C is liable to be allowed subject to appropriate conditions.

#### **Order**

Application 265 C is allowed subject to payment of Rs. 2000/- (Two Thousand) cost to the OP/counsel within a week hereof. In the event of such complacence, the delay caused in moving application 267C shall be deemed to have been condoned. It is also made clear that no further time shall be enlarged for payment of cost as aforesaid. Put up on 04.11.2025 for hearing on application 267C.

**District Judge  
Buduan.**