

UPET010008252024



**In the Court of Additional District and Sessions Judge / Special Judge
[Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act], Etah**

Present: Ashok Kumar XIII (J.O. Code – UP2392)

Civil Misc No. 18 of 2024

1- Indrabhan Agarwal, aged about 80 years, Son of Shri Surajbhan Agarwal (Since Deceased during the pendency of the suit), substituted by:

1/1- Anuj, aged about 28 years, Son of Shri Indrabhan

1/2- Smt. Amita Devi Agarwal, Wife of Shri Indrabhan

All residents of Sarai Mishr, Dhannumeal Wali Gali, G.T. Road, Etah

1/3- Smt. Meena Agarwal, Wife of Shri Sanjay Agarwal, Daughter of Late Indrabhan Agarwal, resident of Anand Vrindavan, 164A, Civil Lines, Bareilly 243001

Versus

1- Smt. Usha, aged about 68 years,

2- Smt. Madhu, aged about 64 years,

3- Smt. Archana, aged about 59 years

Daughters of Late Pratap Bhan Agarwal, residents of Sarai Mishr, G.T. Road, Etah

4- Shri Rajan, aged 60 years, Son of Late Pratap Bhan Agarwal, resident of Mainganj, Etah

5- Shri Pradeep Agarwal, aged about 58 years, Son of Late Pratap Bhan Agarwal, resident of Arunanagar, Etah

6- Shri Rajeev Bansal, aged 55 years,

7- Shri Sanjeev, aged 54 years,

8- Alok Bansal, aged 52 years (Sons of Nar Singh Bhan Singh)

9- Vivek, aged 54 years, under guardianship of Smt Amita Devi

10- Sanjay, aged 52 years, under guardianship of Smt Amita Devi

11- Udayman, aged 31 years (Sons of Indrabhan Agarwal, residents of Etah)

12- Dr. Pinky Agarwal, Wife of Dr. Manoj Agarwal, married daughter of Late Pratap Bhan Agarwal, resident of Gangaram Nursing Home, B-93 Trans Yamuna Colony, Agra.

Dated: 18.04.2026

1. The present application has been moved by the applicants under Order 41 Rule 19 of the Code of Civil Procedure, 1908, seeking the restoration of Civil Misc. Appeal No. 20 of 2022 Indrabhan Agarwal vs. Pratap Bhan Agarwal etc., which was dismissed for want of prosecution on 16.01.2024. The original appellant, Shri Indrabhan Agarwal, averred that Original Suit No. 496 of 1998 (New No. 958 of 2019) is pending before the Court of Civil Judge (Senior Division), Etah, wherein an interim order was passed on 07.07.2007. It was pleaded that the original appellant was an eighty-year-old senior citizen suffering from continuous illness, and on the date fixed for arguments, i.e., 16.01.2024, he was constrained to travel to Agra for urgent medical treatment. Consequently, neither he nor his counsel could appear before the Court, leading to the dismissal of the appeal in default. The applicants, representing the estate of the deceased original appellant, pray that the order dated 16.01.2024 be set aside and the appeal be restored to its original number and heard on merits, as a failure to do so would cause severe prejudice and miscarriage of justice.
2. Upon notice, opposite party nos. 6, 7, and 8 filed a joint reply admitting the contents of the restoration application. They explicitly conceded that the original appellant was undergoing medical treatment in Agra on the relevant date and raised no objection to the restoration of the appeal to its original number. Similarly, opposite party no. 4 filed a reply affirming the old age and ailments of the original appellant, corroborating the medical exigency on 16.01.2024, and gave explicit consent for the appeal to be decided on its merits. Conversely, opposite party no. 5, Shri Pradeep Agarwal, filed a preliminary objection challenging the maintainability of the application. It was contended that during the pendency of the appeal, respondent no. 5, Smt. Urmila Devi, and appellant no. 2, Shri Munna, expired, and their legal heirs were not substituted on record. Furthermore, it was alleged that respondent no. 1/3, Dr. Pinky Agarwal, was not made a party to the restoration

application. On these grounds, opposite party no. 5 asserted that the appeal had legally abated and the restoration application was strictly non-maintainable. The record reveals that all opposite parties were afforded sufficient opportunities for a hearing; opposite party no. 4 remained present and advanced submissions, whereas opposite party no. 5 initially attended but subsequently absented himself despite multiple opportunities being granted by this Court.

3. The primary issue for determination is whether the appellant was prevented by "sufficient cause" from appearing when the appeal was called on for hearing. The provision under Order 41 Rule 19 of the Code of Civil Procedure, 1908 mandates the re-admission of an appeal if the appellant establishes sufficient cause for non-appearance. The term "sufficient cause" is an elastic expression intended to be applied contextually to advance substantial justice. In ***Parimal v. Veena*, (2011) 3 SCC 545**, at paragraph 9, it was held: "The meaning of the word 'sufficient' is 'adequate' or 'enough', inasmuch as may be necessary to answer the purpose intended. It embraces no more than that which provides a platitude which when done suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The test is whether or not a party has acted with reasonable diligence." Applying this standard to the uncontroverted pleadings and the explicit admissions by opposite party nos. 4, 6, 7, and 8, the physical incapacity of an eighty-year-old litigant seeking urgent medical care in another district constitutes an adequate and legitimate ground for absence. The medical exigency overwhelmingly satisfies the threshold of reasonable diligence.
4. Addressing the preliminary objection raised by opposite party no. 5 concerning the abatement of the appeal due to the non-substitution of deceased parties, this Court finds the objection to be legally premature for the adjudication of an application strictly confined to Order 41 Rule 19. The scope of inquiry under this provision is strictly circumscribed to the events and circumstances prevailing on the date of default, i.e., 16.01.2024. The substantive consequences of non-substitution under Order 22 of the Code of Civil Procedure, 1908 must be adjudicated upon the restoration of the appeal to its active number. In ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy*, (2013) 12 SCC 649**, at paragraph 21, it was held: "There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove

injustice." Dismissing the restoration application preemptively on grounds of abatement would contravene this established judicial pragmatism and deny the applicants an opportunity to file requisite applications for setting aside the abatement in the main appeal.

5. Furthermore, the contention regarding the non-impleadment of Smt Pinky Agarwal's name is not included, her name is impleaded by order dated 10.04.2026. she is added by order at serial number 12 in the array of opposite parties. Even assuming procedural irregularities existed, the fundamental philosophy of civil jurisprudence leans heavily in favor of resolving disputes on their substantive merits rather than on procedural technicalities. In ***Robin Thapa v. Rohit Dora, (2019) 7 SCC 359***, at paragraph 8, it was held: "*Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.*" Additionally, in ***M.K. Prasad v. P. Arumugam, (2001) 6 SCC 176***, it was held: "*Even though the appellant appears to be not as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant.*" The conduct of the original appellant, evaluated against the backdrop of his medical condition, does not reflect gross negligence or a deliberate stratagem to delay the proceedings.
6. In view of the findings recorded hereinabove, this Court is of the considered opinion that the applicants have successfully demonstrated sufficient cause for the non-appearance on 16.01.2024. The medical compulsions of the original appellant stand corroborated and admitted by a majority of the contesting opposite parties. The preliminary objections advanced by opposite party no. 5, who subsequently failed to diligently prosecute his own defense, are legally unsustainable at this stage and do not bar the restoration of the appeal. Therefore, to ensure that substantial justice is dispensed on merits, the application for restoration is liable to be allowed, and all allied applications necessary for the disposal of this matter stand disposed of in accordance with the law.

Order

The application under Order 41 Rule 19 of the Code of Civil Procedure, 1908 (Paper No. 4C2) is hereby allowed. The order dated 16.01.2024 dismissing Civil Misc. Appeal No. 20 of 2022 for want of prosecution is set aside. The said

appeal is restored to its original number and status. The parties shall bear their own costs.

Let the appeal be listed for further proceedings in accordance with the law.

Date- 18.04.2026

(Ashok Kumar XIII)
Special Judge [SC/ST (PA) Act]
Etah