

**In the Court of Additional District Judge, Court No. 3, Sultanpur.**

Civil Appeal No. 40 of 2017

CNR No. UPST01-004923-2017

Qasim Hussain

Versus

State etc.

**06.04.2022**

Put up. Heard arguments of learned counsels of both the parties on application 13A2 and 15C2 and its objection 18C2 and perused the file.

Applicants filed an application 13A2 under order 22 rule 3 and order 6 rule 17 of the Civil Procedure Code, supported with affidavit 14C2, and stated therein that appellant Qasim Hussain had died on 29.07.2021 and he left his wife, 5 sons and 2 daughters as his legal heir. Applicants are not aware about the legal proceedings, thus, said substitution application could not be filed within a time. Accordingly, they prayed to incorporate legal heirs of appellant Qasim Hussain into memo of appeal by extending the benefit of Section 5 of the Limitation Act. In support of their contention, they also filed another application 15C2 under Section 5 of the Limitation Act, supported with affidavit 16C2, and reiterated aforesaid ground as mentioned in said application for delay in filing the substitution application and accordingly prayed to be accorded the benefit of Section 5 of the Limitation Act.

Learned counsel of State filed objection, paper no. 18C2, and stated therein that the first party has not disclosed any valid and legal ground for the delay. Accordingly, she prayed to dismiss said application by not giving the benefit of Section 5 of the Limitation Act.

From the perusal of file, it is evident that said appeal has been filed against the impugned judgment and decree dated 26.07.2017 passed by the Civil Judge (SD)/FTC, Sultanpur in original suit no. 125 of 1999 titled as Qasim Hussain alias Kabban Miyan versus State of U.P. etc. During the course of appeal, appellant Qasim Hussain had died on 29.07.2021 as per application 13A2, accordingly legal heirs of Qasim Hussain have been prayed to be incorporated in the said proceeding by condoning the delay in filing the said application. Looking at the nature of appeal, prayed substitution is certainly required as right to sue on behalf of appellant Qasim Hussain survives in favour of his legal representatives. Delay in filing the said application may be condoned on cost. Thus, in the interest of justice, substitution application 13A2 along-with application 15C2 deserves to be allowed on cost.

**Order**

Application 15C2 is hereby allowed on cost of Rs. 500/-. Accordingly, application 13A2 is allowed and applicants are directed to incorporate necessary

amendments in memo of appeal as per rule. File is to be put up for hearing on  
28.04.2022.

Sd/-

Additional District Judge, Court No. 3,  
Sultanpur  
06.04.2022