

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 300 of 2023

Smt. Savitri Bai **Versus** Smt. Jhalo Bai

20/06/2023	Mr. Vinay Nagdev appears on behalf of Mr. Lukesh Kumar Mishra, counsel for the Appellant. Mr. Sanjeev Kumar Agrawal, Panel Lawyer for the State/Respondent No. 3. Heard on I.A. No. 2/2023, an application filed under Rule 125 of The High Court of Chhattisgarh Rules, 2007. Learned counsel appearing for the appellant submits that the appellant - Smt. Savitri Bai was already substituted after the death of original defendant namely – Punnibai, who was her mother, however, the Registry has pointed out the default in this regard vide its note dated 27.05.2023 that although the appellant is substituted in place of said defendant, but the application under Rule 125 (1) of the High Court of Chhattisgarh Rules, 2007 has not been filed, therefore, the alleged default has been pointed out. It is contented further that since the matter is an urgent one, therefore, in order to avoid the delay for the hearing of this appeal, the instant application has been moved as a precautionary measure. Since the Registry has pointed out the said default, therefore, it is necessary to examine the provision prescribed under Rule 125 of The High Court of

Chhattisgarh Rules, 2007, which reads as under:-

125. (1) Where at any time between the conclusion of hearing and the pronouncing of the judgments or after the judgment but before the filing of the appeal, any party to the proceeding in the court below dies, the appeal may be filed by or against the legal representatives, as the case may be, of the deceased party:

Provided that the appeal is accompanied by a separate application, duly supported by an affidavit, praying for bringing on record such person as the legal representative of the deceased party and setting out the facts showing him to be the proper person to be entered on the record as such legal representative.

(2) The Registrar, after satisfying himself that the appeal is in order, shall endorse the date of presentation on the Memorandum of appeal and register the same as an appeal in the Court.

From perusal of the aforesaid provision, it appears that where at any time between the conclusion of hearing and the pronouncement of the judgments or after the judgment is pronounced, but before the filing of the appeal, any party to the proceeding in the Court below dies, the appeal may be filed by or against the legal representatives, as the case may be of the deceased party.

It is thus evident from the aforesaid provision that

it would get attracted only when the party to the proceeding in the Court below dies between the conclusion of hearing and the pronouncement of judgment, or if the judgment is pronounced but before the filing of appeal, else it would not get attracted. Here, in the instant matter, the original defendant-1 (Punnibai) was died when the first appeal was pending and the present appellant who is her daughter has already been substituted in her place, therefore, the aforesaid provision would not be attracted. The default as pointed out by the Registry, therefore, appears to be unreasonable and is, accordingly, overruled.

I.A. No. 2 of 2023, thus, stands disposed of.

Also heard on an application for condonation of delay filed on 27.03.2023.

Learned counsel for the appellant submits that this application has been filed inadvertently as the instant appeal is preferred in time, therefore, he does not want to press this application.

The said application is accordingly rejected as not pressed.

Call for records and post this matter for admission immediately thereafter.

Sd/-

(Sanjay S. Agrawal)

Judge