

**Jaiwanti(deceased) through LRs and others vs. Kamla Devi
(deceased) through LRs and others**

RSA No.349 of 2022

19.03.2026 Present: Mr. Neeraj Gupta, Senior Advocate with with Mr. Harshit Sharma, Advocate, for the appellants.

Mr. Sanjeev Kuthiala, Senior Advocate with Mr.Sana Rana, Advocate, for respondents No.2, 3(a), 3(f), 4(a) to 4(e), 5(b), 6(a) 6(b) & 7 and 8.

CMP(M) No.1836 of 2023

The present application has been filed on behalf of the applicants for bringing on record the legal representatives of deceased appellant No.1(c) Jagdish, who is stated to have expired on 8.10.2020. The details of the legal representatives are mentioned in para-2 of the application and the reasons have been assigned in para-4 of the application. It has been averred in the application that the demise of appellant No.1(c) took place after the passing of the impugned judgment and decree by learned first appellate Court. The applicants have filed CMP No.16993 of 2022, which is pending in this Court and the said application pertains to the refiling of the appeal after the removal of objections. The applicants are rustic villagers and they were not aware of legal intricacies of making a formal application for getting the legal heirs of deceased substituted on record. Further, it has been averred that one of the applicants who had been coming to impart instructions to learned counsel remained under bonafide belief that since the suit was instituted by the other side, therefore, on account of death of Jagdish,

who himself had been substituted on record in the present proceedings on account of demise of one of his legal heirs, it would be for the respondents/non-applicants to make an application for substitution. Therefore, it has been averred that under such circumstances, delay has occurred in moving the present application and the delay in filing the application is bonafide and unintentional.

It is contended by learned Senior Counsel that the delay in filing the application is neither intentional nor willful, but the same has occurred under unavoidable circumstances. Copy of death certificate has been appended along with the application as Annexure A-I and the same is duly supported by an affidavit of one of the legal representatives of deceased appellant No.1(c), namely, Rakesh Roshan.

The application has been opposed by the respondents. It is contended by learned counsel for the respondents that the delay in filing the application is willful, therefore, the present application deserves to be rejected.

I have heard learned counsel for the parties.

In view of the averments, especially para-4 of the application, this Court is of the opinion that the delay in filing the application is bonafide and being rustic villagers, the applicants could not file the present application well within time. Therefore, in attending facts and circumstances of the case, the present application is allowed and the legal representatives as

mentioned in para-2 thereof are ordered to be brought on record, after condoning the delay and setting aside the abatement, if any.

Accordingly, the application stands disposed of.

CMP(M) No.1669 of 2023

The present application has been filed for bringing on record the legal representative of deceased appellant No.4, who is stated to have expired on 20.12.2018 and the death certificate has been appended with the application as Annexure A-I. In the application, it has been averred that after the passing of impugned judgment and decree by the learned first appellate Court, appellant No.4 Raju has expired. Further, it has been averred that CMP No.16993 of 2022 is pending before this Court for adjudication. The applicants are rustic villagers and were not aware of the legal intricacies of making a formal application for getting the legal heirs of deceased substituted on record.

It is contended by learned Senior Counsel that the delay in filing the application is neither intentional nor willful but the same has occurred under unavoidable circumstances. Though, the application has been contested by the respondents, however, this Court deems it fit that in view of the averments as made in the application especially keeping in view the fact that the applicants are rustic villagers, the applicants could not file the present application well within time. Therefore,

under attending facts and circumstances of the case, the present application is allowed and the legal representatives as mentioned in para-2 are ordered to be brought on record, after condoning the delay and setting aside the abatement, if any. Accordingly, the application stands disposed of.

CMP No.16993 of 2022

The present application has been filed by the present applicants for condonation of delay in refiling the appeal after removal of the objections. It has been averred in the application that the impugned judgment and decree as passed by the learned first appellate Court was passed on 22.09.2017. After the passing of the judgment and decree, the application was filed for supply of certified copy and the same was made on the date of pronouncement of judgment itself and came to be attested on 03.11.2017. The present regular second appeal was preferred in the Registry of this Court on 26.02.2017. The Registry of this Court scrutinized the appeal and four objections were raised on its scrutiny on 09.03.2018. It has been further stated that the paper book, after being obtained, got mixed up with other papers in the office and due to which the same could be refiled after removal of objections. The applicants did not check up immediately thereafter as regards the fate of the appeal and further for almost two years due to Covid-19 pandemic there was no further development. Recently, the non-applicants on the basis of impugned judgment and decree

approached the revenue officials for attestation of mutation in their favour and it was during such time the applicants came to know that the appeal had not been refiled, however, had initially been filed within time. The applicants were under impression that the appeal is likely to take time and intimation would come as and when some orders would be passed requiring them to go to Shimla. Since, the other party was pressing hard for attestation of mutation, copy of grounds of appeal and particulars of filing date and number were supplied to the applicants to be furnished to the revenue officials yet, the paper book could not be traced. After making continuous diligent search, the paper book was traced from the record of the office on 30.11.2022 and after removal of objections it was filed immediately. It has been averred in the application that since valuable rights of the applicants are involved in the present case and since they have faced the decree, there was no occasion for them to have not refiled the regular second appeal, which otherwise was filed well within time.

Learned Senior Counsel has submitted that since the civil rights of the applicants are involved in the present litigation, therefore, the delay in refiling the appeal required to be condoned in order to impart substantial justice.

The non-applicants have opposed the present application on the ground that there is a considerable delay in filing the refiling of the appeal after removal of objections.

Therefore, the same cannot be condoned and the application as well as the appeal deserve to be rejected.

I have heard learned counsel for the parties.

From the perusal of the explanation, as given in the application, this Court is of the opinion that the applicants have made out a case for allowing the present application. The reasons which have been assigned in para-3 are reasonable and plausible and it has been explained in the said para that after obtaining the paper book for removal of objections, the papers got mixed with the other papers in the office due to which the same could not be refiled well in time. Though, there is a considerable delay in refiling the appeal, however, as a matter of indulgence and in view of attending facts and circumstances, the present application is allowed, subject to payment of costs of Rs.25,000/- to be paid to the respondents on or before 20th April, 2026. Learned counsel for the respondents is requested to supply the details of bank account of the non-applicants within one week, in which the applicants shall deposit the said amount of costs.

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List for admission on 20.04.2026.

**(Romesh Verma)
Judge**

March 19, 2026
(vt)