

Bhilo Ram (since deceased) through LRs. vs. Bhagat Ram

RSA No.514 of 2007

29.02.2024 Present: Mr. Surender Sharma, Advocate, for the appellants.
Mr. K.D. Sood, Senior Advocate, with Mr. Het Ram Advocate for the proposed respondents.

CMP(M) Nos.1306 & 1307 of 2022

The instant applications under Order 22, Rules 4 & 9 read with Section 151 of CPC and Section 5 of the Limitation Act have been filed to bring on record the legal heirs of deceased respondent Bhagat Ram. As per the applicants/appellants, respondent Bhagat Ram has expired during the pendency of the present appeal on 21.11.2018, leaving behind his legal heirs as mentioned in para-2 of the application bearing CMP(M) No.1306 of 2022, who are required to be brought on record. The applications are duly supported with the affidavits of applicant/appellant No.4-Ramesh Kumar.

Reply to these applications has been filed, wherein it has been averred that the death certificate of Bhagat Ram was supplied alongwith the application under Order 22, Rule 10A CPC to the counsel for the appellants on 22.02.2022. Even from the date of knowledge of the death of respondent Bhagat Ram, the application (CMP

No.4198 of 2022) has been filed in the month of September, 2022, as such, both these applications deserve to be dismissed as respondent Bhagat Ram had died long time back and the appeal stands automatically abated.

I have the heard the learned counsel for the applicants/appellants as well as learned Senior Counsel for the proposed respondents and also gone through the material available on record.

From the perusal of the record, it is clear that the sole respondent-Bhagat Ram had expired on 21.11.2018 during the pendency of the appeal and the factum of his death was brought to the notice of learned counsel for the applicants/appellants on 22.02.2022, on which date, copy of the application under Order 22, Rule 10A CPC was supplied to the learned counsel for the applicants/appellants. It has been stated in the application that the learned counsel for the applicants/appellants contacted the applicants/appellants to collect the necessary documents and the legal heirs certificate was obtained by the applicants/appellants on 31.05.2022 and thereafter the present applications were filed on 08.09.2022. According to the applicants/appellants, the

delay in filing the application has occurred due to the bonafide reasons and was not willful or intentional.

Hence, in view of averments made in the application, since right to sue survives against the legal heirs of the deceased respondent, therefore, in the interest of justice, both the applications are allowed subject to the costs of Rs.2000/- which shall be paid within a period of four weeks from today and the legal heirs of deceased respondent Bhagat Ram, as mentioned in para-2 of the application bearing CMP(M) No.1306 of 2022, are ordered to be brought on record, after setting aside the abatement.

Applications stand disposed of.

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Amended memo of parties, annexed with the application bearing CMP(M) No.1306 of 2022, is ordered to be placed on record.

Since the appeal stands already admitted, list for final hearing in due course.

February 29, 2024
(subhash)

(Sushil Kukreja)
Judge