

Bal Krishan Vs. Atma Nand & Others

RSA No.173 of 2010

01.04.2024 Present: Mr. Divya Raj Singh, Advocate, for the applicants.

Mr. Rohit, Advocate vice Mr. Dheeraj K. Vashisht, Advocate, for respondents No.1 to 4.

CMP(M) Nos.1184 & 1186 of 2023

By way of the present applications, indulgence of this Court has been sought to bring on record the legal representatives of sole appellant Bal Krishan, who, as per the application, has expired on 2.2.2018.

2. The applicants have also submitted that the application could not be moved within the prescribed period of limitation, as, they were not aware of any appeal pending, as, the matter was being pursued by their late father.

3. According to the applicants, they came to know about the pendency of the appeal, when they received a message from learned counsel, in order to ascertain the status of the parties. Thereafter, they had contacted their counsel and factum of death of the appellant was divulged. Thereafter, they obtained the death certificate and the application has been moved.

4. On the basis of the above facts, a prayer has been made to implead them as legal representatives of appellant, by setting aside the abatement, if any.

5. When put to notice, these applications have been contested by the respondents. The main ground, upon which, the applications have been contested, is that no sufficient cause has been shown to condone the delay, as, after the death of sole appellant, the matter was listed before the Court on many occasions and the application under Order 39 Rules 1 and 2 CPC was decided on merits, by this Court, on 15.11.2021. All these facts have been highlighted to show that the proposed legal representatives were aware about the pendency of the appeal.

6. On the basis of the above facts, a prayer has been made to dismiss the applications.

7. Heard.

8. The matter is pending in this Court since 2010. The death of sole appellant had taken place on 2.2.2018. Thereafter, on various occasions, proceedings were conducted, as is evident from the orders passed by this Court, from time to time. However, one thing is clear that the applications were moved, after the prescribed period of limitation and there is nothing on record to show

any negligence or inaction, on the part of the proposed legal representatives, in pursuing the matter.

9. Perusal of the record, shows that the present appeal has been preferred by Bal Krishan, predecessor-in-interest of the applicants, against the judgment and decree dated 19.3.2010, passed in Civil Appeal No.53 of 2008, titled Atma Nand & Others Vs. Bal Krishan, by learned District Judge, Una (hereinafter referred to as the 'First Appellate Court').

10. By virtue of the judgment and decree dated 19.3.2010, the learned First Appellate Court, has allowed the appeal preferred by Atma Nand. In such situation, when the judgment and decree passed by the learned First appellate Court is against Bal Krishan, predecessor-in-interest of the applicants, there is nothing in the reply, which would justify the object, which the applicants, were going to achieve, in not preferring the appeal within time, had they not been prevented to do so, by the circumstances mentioned in the application.

11. Keeping in view the low literacy of the Indian masses, the applications are allowed and after condoning the delay and setting aside the abatement, if any, the legal representatives of the appellant are ordered to be brought

on record as appellants No.1(a) to 1(e). Amended memo of parties, annexed with the application be taken on record.

12. The applications stand disposed of.

CMP No. 2987 of 2024.

13. The present application has become infructuous, as such, the same is disposed of.

CMP No.2986 of 2024

14. Reply be filed on or before the next date of hearing.

List on **6th May, 2024.**

**(Virender Singh)
Judge**

April 01, 2024_(ps)