

HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR

S.B. Civil First Appeal No. 434/2008

Nazeer Miya

----Appellant

Versus

Bablu Khan

-----Respondent

For Appellant(s) : Ms. Nandipna Gehlot

For Respondent(s) : Mr. VD Gaur

HON'BLE MR. JUSTICE FARJAND ALI

Order

05/05/2026

1. The matter comes up upon an application (IA No.1/26) filed under Order XXII Rules 3 and 9 read with Section 151 CPC for taking on record the legal representatives of appellant No.1/3 – Late Hussain Miyan, who expired on 28.03.2017. Since the right to sue survives and the appeal can be continued, the applicants, being the legal heirs of the deceased appellant No.1/3, have moved the present application seeking substitution of their names in place of the deceased appellant.
2. There is delay in filing the application for substitution; however, an application (IA No.2/2026) under Section 5 of the Limitation Act has also been filed seeking condonation of delay, inter alia, on the ground that the applicants were not aware of the pendency of the present appeal and the relevant facts.

3. Shri V.D. Gaur, learned counsel appearing for the respondents, does not dispute either the factum of death of appellant No.1/3 or the status of the applicants as legal representatives of the deceased appellant.
4. In view of the pleadings and considering that the right to sue survives, both the applications are allowed. The delay in filing the application for substitution is hereby condoned. The deemed abatement, as contemplated under Rule 9 of Order XXII CPC, is set aside.
5. The legal representatives of deceased appellant No.1/3 be taken on record. The amended cause title, already filed, is taken on record and be placed appropriately.

(FARJAND ALI),J