

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR**

S.B. Civil Second Appeal No. 143/2000

Imam Khan

----Appellant

Versus

State

----Respondent

Connected With

S.B. Civil Second Appeal No. 142/2000

Kareem Khan

----Appellant

Versus

State And Ors

----Respondent

S.B. Civil Second Appeal No. 144/2000

Deedar Khan And Ors

----Appellant

Versus

State And Ors

----Respondent

S.B. Civil Second Appeal No. 145/2000

Barkat Khan And Ors

----Appellant

Versus

State And Ors

----Respondent

For Appellant(s) : Mr. Manish Patel

For Respondent(s) : Mr. O.P. Boob

HON'BLE MR. JUSTICE P.K. LOHRA

Order

17/01/2019

The appeal No.143/2000 comes up on an application under Order 22 Rule 3 read with Rule 9 CPC laid on behalf of legal heirs of sole appellant-Imam Khan, who is said to have died on 21.06.2017.

While craving for setting aside abatement of appeal and taking legal heirs mentioned in the application on record, it is, inter-alia, averred in the application that applicants were unaware about abatement of appeal as the appeal was posted for hearing in due course. It is also averred that the delay was bona fide and not intentional.

Learned counsel Mr. Patel has also argued that while considering application under Order 22 CPC Court is required to take a liberal approach because the intention of the legislation is not to make it a penal statute. In support of his contention, learned counsel has placed reliance on Banwari Lal (Dead) by Legal Representatives & Anr. V/s. Balbir Singh [(2016) 1 SCC 607].

Per contra, learned counsel for the State, Mr. Boob has opposed the prayer made in the application. It is submitted by Mr. Boob that the application has been filed after delay of more than a year and as per the provisions of Rule 3 of Order 22 CPC, appeal stands abated on expiry of 90 days from the date of death of appellant.

I have bestowed my consideration to the arguments advanced and has also examined the ratio of judgment in Banwari Lal's case (supra).

Having regard to the facts and circumstances, I feel persuaded to accept the application and accordingly abatement is

Learned counsel has already filed amended cause title, same may be arranged at appropriate place in the file.

63-66 Bharti/-

