



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 49633 of 1999

Hardwari Lal Family Trust

.....Petitioner(s)

Versus

Dy. Director of Consolidation and others

.....Respondent(s)

Counsel for Petitioner(s)	: D.V. Jaiswal, Rajesh Singh Rathore
Counsel for Respondent(s)	: C.S.C., Girija Shankar Srivastava, Neerad Srivastava, Sankatha Rai

Court No. - 54

HON'BLE KSHITIJ SHAILENDRA, J.

Civil Misc. Delay Condonation Application No.6 of 2021.

Civil Misc. Substitution Application No.7 of 2021.

1. Counter and rejoinder affidavits on these applications have been exchanged and, therefore, the same are being decided.
2. Heard Shri Rajesh Singh Rathore, learned counsel for the petitioners and Shri G.S. Srivastava, learned counsel for the legal representatives of deceased-respondent No.6.
3. The applications have been filed on account of death of respondent No.6 and seeking substitution of his four legal representatives.
4. By order dated 26.08.2021, notices were issued to legal representatives of deceased respondent No.6, on account of death of previous counsel Shri Sankatha Rai and non-service of notice to engage another counsel.
5. Pursuant to the aforesaid order, Shri Srivastava has put in appearance on behalf of proposed legal representatives Nos.6/1 and 6/2 and taking note of his appearance and also the fact that proposed respondents No.6/3 and 6/4 had not appeared despite service, service of notice upon them was also held to be sufficient.
6. Learned counsel for the petitioners submits that previous counsel had died and he was engaged in the year 2020 by the petitioners, whereafter,

he inquired the matter and then the substitution application has been filed, which should be allowed after condoning delay.

7. The application has been vehemently opposed by Shri Srivastava and stand has been taken in the counter affidavit that no date of death of respondent No.6 has been indicated in the affidavit and, therefore, the same is in violation of provisions of Rule 18 of Chapter IX of Allahabad High Court Rules, 1952 ('the Rules').

8. It is further submitted that abatement of proceedings is automatic and no specific order is required for that and, therefore, considering the date of death of respondent No.6, which occurred in March, 2014 and non-substitution of heirs within time, the writ petition has abated by operation of law as per provisions of Order XXII Rule 4 C.P.C.

9. Rejoinder affidavit takes the stand in consonance with the stand taken in the affidavit supporting application.

10. I have considered the submissions made and have perused the record.

11. The order sheet indicates that on 01.12.1999, while issuing notice to the respondents, interim order was granted. Thereafter, service of notice upon respondents No.4 and 5 was held to be sufficient on 14.05.2013. On the same date, death of Shri Sankatha Rai, learned counsel for the respondent No.6 was intimated to the Court, accordingly, notice was issued to respondent No.6 to engage another counsel.

12. In the order dated 26.08.2021, non-service of notice to engage counsel stands recorded and, therefore, notices were issued to legal representatives of respondent No.6, whereafter, Shri Srivastava has put in appearance.

13. Though, it is true that no date of death of respondent No.6 has been indicated in the affidavit supporting delay condonation application and substitution application, however, the very fact that the legal representatives of respondent No.6 have indicated occurrence of death of their predecessor in March 2014, the same is sufficient to infer that he died after the death of his counsel.

14. Had the previous counsel been alive on the date of death of respondent No.6, provisions of Order XXII Rule 10-A C.P.C. would have come into picture whereunder, it is obligation on the counsel for the deceased party to intimate the death of his client and bring the same on record and, for the said purpose, the contract between the deceased party and the counsel is deemed to subsist as per the provision itself.

15. Though, Rule 18 of Chapter IX has been pressed into service by Shri Srivastava, by virtue of Chapter VIII Rule 38-A of the Rules, provisions of Chapter XXII apply to the writ proceedings. Therefore, while considering the present applications, apart from the Rule 18 of Chapter IX, the Court has to examine the record position as well other rules read with provisions of C.P.C. and once no occasion arose for the previous counsel, who had died prior to death of his client, to intimate death of respondent No.6, which otherwise was not possible to bring on record, the proceedings subsequent to 14.05.2013, as on the order sheet, need to be examined.

16. A perusal of the order sheet indicates that it is only when the notice was served upon proposed heirs of respondent No.6 that Shri Srivastava has put in appearance and dispute regarding date of death has been raised.

17. There is nothing on record to indicate that the petitioner was aware of death of respondent No.6, therefore, non-mention of date of death of respondent No.6 cannot be said to be fatal.

18. In view of the aforesaid facts and circumstances, coupled with the fact that purpose of substitution is not to decide rights of parties on merits but is only for due representation of the parties and decision of the Hon'ble Supreme Court in **Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by Lrs. and others : (2008) 8 SCC 321**, this Court is inclined to condone the delay in filing the substitution application and allow the same. Relevant paragraphs of the said judgement are extracted hereunder:-

"11. In **Sital Prasad Saxena v. Union of India & Ors. :([1985) 1 SCC 163]**, this Court stated :

"...once an appeal is pending in the High Court, the heirs are not

expected to keep a constant watch on the continued existence of parties to the appeal before the High Court which has a seat far away from where parties in rural areas may be residing. And in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party. Let it be recalled what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties."

12. In **State of Madhya Pradesh vs. S. S. Akolkar** :- (1996) 2 SCC 568, this Court held :

"Under Order 22 Rule 10A, it is the duty of the counsel, on coming to know of the death of a party, to inform it to the Court and the Court shall give notice to the other party of the death. By necessary implication delay for substitution of legal representatives begins to run from the date of knowledge....."

16. In contrast, when an appeal is pending in a High Court, dates of hearing are not fixed periodically. Once the appeal is admitted, it virtually goes into storage and is listed before the court only when it is ripe for hearing or when some application seeking an interim direction is filed. It is common for appeals pending in High Courts not to be listed at all for several years. (In some courts where there is a huge pendency, the non-hearing period may be as much as 10 years or even more). When the appeal is admitted by the High Court, the counsel inform the parties that they will get in touch as and when the case is listed for hearing. There is nothing the appellant is required to do during the period between admission of the appeal and listing of the appeal for arguments (except filing paper books or depositing the charges for preparation of paper books wherever necessary). The High Courts are overloaded with appeals and the litigant is in no way responsible for non- listing for several years. There is no need for the appellant to keep track whether the respondent is dead or alive by periodical enquiries during the long period between admission and listing for hearing. When an appeal is so kept pending in suspended animation for a large number of years in the High Court without any date being fixed for hearing, there is no likelihood of the appellant becoming aware of the death of the respondent, unless both lived in the immediate vicinity or were related or the court issues a notice to him informing the death of the respondent.

17. The second circumstance is whether the counsel for the deceased

respondent or the legal representative of the deceased respondent notified the court about the death and whether the court gave notice of such death to the appellant. Rule 10A of Order 22 casts a duty on the counsel for the respondent to inform the court about the death of such respondent whenever he comes to know about it. When the death is reported and recorded in the ordersheet/proceedings and the appellant is notified, the appellant has knowledge of the death and there is a duty on the part of the appellant to take steps to bring the legal representative of the deceased on record, in place of the deceased. The need for diligence commences from the date of such knowledge. If the appellant pleads ignorance even after the court notifies him about the death of the respondent that may be indication of negligence or want of diligence.

18. The third circumstance is whether there is any material to contradict the claim of the appellant, if he categorically states that he was unaware of the death of the respondent. In the absence of any material, the court would accept his claim that he was not aware of the death."

19. Accordingly, both the aforesaid applications are **allowed**.

20. Delay in filing substitution application is hereby condoned.

21. Abatement, if any, is **set aside**.

22. Office is directed to incorporate necessary substitution in the array of parties within **three weeks**.

Order on Writ Petition.

1. List this petition for final disposal on **18.02.2026** before appropriate Bench.

2. In case certain pleadings on merits are required to be exchanged between the parties, the same shall be exchanged before the next date.

(Kshitij Shailendra,J.)

January 19, 2026
Jyotsana