

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

BEFORE THE REGISTRAR S.G. SHAH

Petition(s) for Special Leave to Appeal (Civil) No(s).5134/2011

G.M., HARYANA ROADWAYS SONEPAT

Petitioner(s)

VERSUS

ANITA DEVI & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP,exemption from filing
O.T.,c/delay in refiling SLP and prayer for interim relief)

Date: 25/07/2011 This Petition was called on for hearing today.

For Petitioner(s)

Mr. Kamal Mohan Gupta,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Nobody is present for the petitioner.

Served respondents may file counter affidavit on or
before 12.9.2011.

However, list before the Hon'ble Judge in Chambers
initially for respondent No.5, in view of change of status for
respondent No.5.

Registry is directed to refer [2010] 9 SCR 674 ,
date of judgment-5.8.2010, C.A. No. 6291/2010 titled as Budh
Ram & Ors Vs. Bansi & Ors and [2010] 8 SCR 597, date of
judgment 8.7.2010, C.A. No.1166/2006 titled as Balwant Singh
Item No.144

(Dead) Vs. Jagdish Singh & Ors., whereby Hon'ble Court has
recently confirmed the legal position which is otherwise well
settled in the Code of Civil Procedure that what is to be done
when any litigant expires and if proper steps are not taken
within the prescribed period of limitation to bring the legal
heirs of such deceased litigant by the concerned persons, by
legal
heirs of such deceased litigants or any litigant on record. In

such case, when there is a direct judgment by the Hon'ble Court
stating

" Abatement takes place automatically by application of law without any order of the court. Setting aside of abatement can be sought once the suit stands abated. Abatement in fact results in denial to hearing of the case on merits. Order XXII Rule 1 CPC deals with the question of abatement on the death of the plaintiff or of the defendant in a Civil Suit. Order XXII Rule 2 relates to procedure where one of the several plaintiffs of the defendants die and the right to sue survives. Order XXII Rule 3 CPC deals with procedure in case of death of one of the several plaintiffs or or the sole plaintiff. Order XXII Rule 4 CPC, however, deals with procedure in case of death of one of the several defendants or or the sole defendants Sub-clause(3) of Rule 4 makes it crystal clear that where within the time limited by law, no application is made under sub-Rule 1, the suit shall abate as against the deceased defendant. In Para 13 it is stated that provisions of Order XXII Rule 4(4) CPC, provide that in case, the deceased defendant did not contest the suit and did not file a counter affidavit, the substitution may not be warranted."

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Therefore, registry is specifically advised and directed not to address letters as being done in the present case inviting the litigant for filing vakalatnama or for taking some steps.

It is none of the business of the registry in absence of any provision of law and specific direction to that effect by the competent authority, to invite the litigant and to address letters to the Advocates for doing any particular activity in the matter.

Registry shall list such matters before the Hon'ble Judge in Chambers for appropriate formal order regarding abatement when litigants fail to bring on record the legal heirs of deceased respondent within prescribed period of limitation.

(S.G. SHAH)
REGISTRAR

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