



2026:AHC:69535

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL DEFECTIVE No. - 221 of 2022

State of U.P.

.....Appellant(s)

Versus

Uday Bhan (Deceased) And Another

.....Respondent(s)

Counsel for Appellant(s) : Tej Bhanu Pandey

Counsel for Respondent(s) : Anand Prakash Pandey, Sushma Dwivedi

A.F.R.

Court No. - 39

HON'BLE SANDEEP JAIN, J.

InRe: Civil Misc. Abatement Application No.9 of 2025

1. This application has been filed by Kuwar Prakash Singh the legal heir of deceased respondent no.1/1 Kailash Singh on the ground that Kailash Singh has died on 07.06.2021 and its information was also given to the appellant-State in the counter affidavit filed to the delay condonation application of the appellant, a copy of which was received by the State on 02.02.2024 but still the substitution application was not moved by the State within the prescribed period of limitation. It was further submitted that when the substitution application was not moved by the appellant, then this abatement application was filed on 16.09.2025 for abating the appeal and then substitution application along with the condonation of delay has been filed by the State on 24.09.2025. Learned counsel submitted that from the above facts, it is apparent that there was deliberate delay on the part of the appellant in not bringing on record the legal heir of deceased respondent Kailash Singh which cannot be condoned, keeping in view the conduct of the appellant.

Order on Civil Misc. Delay Condonation Application No.2 of 2022, Civil Misc. Delay Condonation Application No.10 of 2025, Civil Misc. Substitution Application No.11 of 2025 & First Appeal

1. According to office report, the instant appeal has been filed with a delay of 1516 days on 09.09.2022.

2. The instant appeal under Section 54 of the Land Acquisition Act, 1894 has been filed by the State for reduction of compensation awarded by the Reference Court through judgment and decree dated 31.03.2018 passed by the Additional District Judge & Judge Land Acquisition/FTC-II, Mau in L.A.R. No.46 of 1991 [Uday Bhan (Deceased) through legal heirs vs. State of U.P. through Collector, Mau] whereby a compensation @ Rs.2,00,000/- per acre has been awarded to the land owners along with other statutory benefits admissible under the Act.

3. Learned counsel for the State submitted that the delay in filing the appeal occurred because permission was sought from the higher officials and only after obtaining permission, the appeal was filed. Learned counsel submitted that ultimately the permission was granted by the State on 19.05.2022 for filing this appeal, thereafter, this appeal has been filed with delay on 09.09.1992. Learned counsel submitted that since the permission from the State was obtained with delay, as such, the delay in filing the instant appeal be condoned and thereafter, the appeal be decided on merits.

4. It was further submitted that only after filing of abatement application on 16.09.2025, the appellant became aware that the respondent Kailash Singh has died, as such, the substitution has been filed within the period of limitation, from the date of knowledge, on 24.09.2025. It was submitted that there is no delay in filing the substitution application, and if there is any delay, then it be condoned, and the application be allowed.

5. Per contra, learned counsel for the respondent land owners submitted that the award of the Reference Court was passed on 31.03.2018 but when the State did not pay the compensation as awarded by the Reference Court then the land owner was compelled to file execution proceeding, which was numbered as Execution Case No.5 of 2019 (Kailash Singh and others vs. State of U.P.), in which the District Government Counsel(D.G.C.) remained present, who from time to time sought adjournment in the matter, which was granted by the executing court. Learned counsel further submitted that when the State failed to pay the compensation then an order was passed by the executing court for attaching the account of the State. It was further submitted that the State moved an application to recall attachment, which was also dismissed by the executing court on

11.10.2021 but even then the appeal was not filed. Learned counsel further submitted that the executing court from time to time recorded the assurances given by the D.G.C. regarding filing of appeal by the State but deliberately neither the appeal was filed nor any payment was made to the land owners. Learned counsel further submitted that in the counter affidavit filed by the land owner to the delay condonation application of the State, it was informed that the land owner Kailash Singh has died and even the counter affidavit was filed by his heir Kuwar Prakash Singh but even then substitution application was not moved by the State within the prescribed period of limitation. It was further submitted that ultimately when the abatement application was filed by the land owner, then substitution application was filed on 24.09.2025, which was more than four years after the death of the respondent Kailash Singh, who died on 07.06.2021. Learned counsel submitted that it is apparent from the above facts that State has remained negligent in moving the substitution application as well as in pursuing the remedy before this Court and conduct of the State disentitles it from getting any relief from this Court. With these submissions, it was prayed that the substitution application of the State be dismissed since the appeal has already abated and the delay condonation application of the State be also dismissed.

6. I have heard learned counsel for the parties and perused the record.

7. It is apparent that the judgment and award of the Reference Court was passed on 31.03.2018 and the execution case was filed by the land owner, which was numbered as Execution Case No.5 of 2019. The respondent land owner has filed certified copy of the proceedings of the execution case, which disclose that State was well aware of the execution proceedings but no appeal was filed within the prescribed period of limitation and even the account of the State was attached in compliance of the order of the executing court. It is further evident that the executing court also wrote a letter to the Secretary, Department of Revenue, State of U.P for making payment to the land owners but even then no appeal was filed by the State. Ultimately, the executing court was compelled to pass the order dated 03.08.2021 whereby the account of the State in the treasury was attached in order to make payment of the compensation to the land owners. It is further apparent that an application was moved by the State for recalling that order, which was also rejected. By order dated

03.08.2021 of the executing court, the decree holder was directed to take steps for the attachment of the account of the State. It is further apparent that Kuwar Prakash Singh moved an application disclosing that decree holder Kailash Singh has died on 27.06.2021 and an application was moved for bringing on record legal heir of the deceased decree holder, which was allowed on 27.08.2021. It is further apparent that by order dated 01.10.2021, the account of the Collector/District Magistrate, Mau in Union Bank of India, Collectorate Branch, Mau was attached for an amount of Rs.25,50,000/- but even then the appeal was not filed by the State.

8. It is further apparent that the instant appeal was filed by the State on 09.09.2022 with the delay of 1516 days and a delay condonation application was filed against which a counter affidavit was filed by the respondent land owner, who opposed the delay condonation on the above grounds. It is specifically averred in the counter affidavit that the appellant-State was very well aware of passing of the impugned judgment and decree by the Reference Court but deliberately no appeal was filed within the prescribed period of limitation. The counter affidavit has been filed by Kuwar Prakash Singh, who is the legal heir of deceased-respondent Kailash Singh, who died on 27.06.2021, prior to filing of the appeal, as such, the State was supposed to move impleadment application promptly, for bringing on record Kuwar Prakash Singh, but it was ultimately filed after a delay of more than three years, when an abatement application was moved by Kuwar Prakash Singh on 16.09.2025 to abate the appeal. It is apparent that the appeal was filed against the dead respondent Kailash Singh, and in the execution proceeding, the State was aware that he has died on 27.06.2021.

9. The above facts and circumstances amply demonstrate that the State has always been negligent in pursuing the remedy available to it and only on this ground that the permission for filing of the appeal was granted belatedly, the delay in filing the instant appeal cannot be condoned. It is further apparent that there was gross negligence on the part of the State in preferring this appeal, which was filed against dead respondent, and not bringing on record the legal heirs of deceased respondent Kailash Singh for more than three years, inspite of knowledge, for which there cannot be any plausible explanation because for bringing on record, the legal heir of

deceased respondent, no permission of higher officials of the State was required.

10. It is apparent that the appeal of the State filed against dead respondent, is a nullity and non-est. The conduct of the State, debars it from getting any relief from this Court.

11. The High Court of Calcutta in the case of ***State of West Bengal vs. Manisha Maity and others 1963 SCC OnLine Cal 85***, held as under:-

*“15. Rule 4 of Order 22 of the Code of Civil Procedure, providing for the procedure for substitution of the heirs and legal representatives of deceased defendants, no doubt applies to appeals and provides for substitution of the heirs of a deceased respondent. But the rule has no application when the appeal itself was preferred against a dead person. In other words, if the appeal had been preferred against a respondent, who was alive at the time of the filing of the appeal, but died subsequent thereto, his heirs and legal representatives may be brought on the record, by way of substitution, within the time allowed by law. If an application for substitution of the heirs of a respondent, who died during the pendency of the appeal, be not made within the time allowed by law, the appeal abates but rule 9 of Order 22 of the Code of Civil Procedure provides for a procedure for setting aside abatement. **But if an appeal be preferred against a dead respondent, the appeal itself is still born and is no appeal in the eye of law. Nothing in Order 22 of the Code of Civil Procedure will revive the appeal, when the death of the respondent comes to light.**”*

16. In order to prefer an appeal against a decree obtained by a person, who was dead at the time of the filing of the appeal, it would be necessary to make his heirs or legal representatives respondents to the appeal. The factum of the death of the decree-holder and names of his heirs or legal representatives may be incorporated, for greater safety, in an affidavit accompanying the memorandum of appeal, and an order may be sought from the appeal court to proceed with the appeal against the heirs of the person, who had obtained the decree.

17. The remedy of an appellant, who has unknowingly filed an appeal against a dead person, is to file an application for presentation of the appeal against the heirs of the dead person afresh. If the time for filing the appeal was in the meantime over, he is to present an application, under section 5 of the Limitation Act, therein explaining the delay in presenting the appeal afresh against the heirs of the dead person. If he can make out sufficient cause for making the belated prayer, the court may allow the same, amend the cause title of the memorandum of appeal by incorporation of the names of the heirs and legal representatives of the dead person and treat the appeal as a freshly presented appeal against the heirs.”

(emphasis supplied)

12. Similarly, the High Court of Delhi in the case of ***Ravinder Dabas vs. Govt. of NCT of Delhi 2023 SCC OnLine Del 4458***, held as under:-

*“11. Having heard learned counsels for the parties, this Court is of the view that the present appeal stands abated qua deceased respondent No. 3. Perusal of the appeal filed by the appellant herein demonstrates that it has been clearly stated on behalf of the appellant that Gian Chand died in the year 2020. **Thus, the appeal was filed on behalf of the appellant against a dead person. An appeal filed against a dead person**”*

***is clearly not maintainable and is a nullity.** Thus, provisions under Order XXII Rule 4 CPC for bringing on record the legal heirs of deceased respondent No. 3, cannot be invoked by the appellant herein. The provision of Order XXII Rule 4 CPC will apply only in a case when a party dies during the pendency of the proceedings. A bare perusal of provisions of Order XXII Rule 4 CPC manifest that the said provisions apply only in case of death of the respondent during the subsistence of the case.”*

(emphasis supplied)

13. In view of the above facts, the abatement application of Kuwar Prakash Singh and the substitution application of the State along with delay condonation application are dismissed, being legally not maintainable because the appeal was filed against dead respondent Kailash Singh. Had he died after the filing of appeal, then, abatement and substitution application were legally maintainable. The appeal having being filed against dead respondent, was itself not legally maintainable, which was non-est, as such, no question of condoning the delay, in its filing arises.

14. In view of the above facts, all the applications being legally not maintainable are dismissed. Consequently, the appeal being filed against dead respondent Kailash Singh is also dismissed as a nullity.

15. The impugned judgment and award dated 31.03.2018 of the Reference Court is affirmed.

(Sandeep Jain,J.)

April 1, 2026

Jitendra