HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT SRINAGAR

CSA No. 8/2013
CM Nos. 6593/2025, 1407/2026,
1408/2026, 1409/2026 & 1410/2026

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Whether judgment is full:Full

Maqbool Buhroo and others vs Ahad Buhroo and others

Petitioners(s)

Through: - Mr. Altaf Haqani Sr. Advocate with
Mr. Asif Wani Advocate.

…Respondent(s)

Through: - Mr. G.A.Lone Sr. Advocate with
Mr. Mujeeb Andrabi Advocate.

CORAM: **HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**

ORDER

CM No. 6593/2025

1 This is an application moved by respondents No. 1 to 6 and 8 to 11 seeking dismissal of the appeal as having abated on account of the death of respondent No. 7, Mohd. Ashraf, son of Ahad Buhroo, resident of Mutalhama, Tehsil and District Kulgam. It is submitted that during the pendency of the present Civil Second Appeal, i.e., CSA No. 08/2013, one of the respondents, namely Mohd. Ashraf, respondent No. 7 herein, died on 21.03.2020. The appellants, being residents of the same village, had knowledge about the death of the deceased respondent, yet failed to file an application for substitution of his legal heirs within

the statutory period. Hence, the application for dismissal of the appeal as having abated.

CM No. 1407/2026

2 This is an application by the appellants seeking condonation of delay of 12 days in filing the application for setting aside of the abatement of the appeal. It is submitted that the appellants acquired knowledge about the death of deceased Mohd. Ashraf, i.e., respondent No. 7, only when the respondents other than respondent No. 7 filed CM No. 6593/2025. Immediately thereafter, inquiries were made to ascertain the details of the legal heirs of the deceased respondent, besides those mentioned in CM No. 6593/2025, which obviously consumed considerable time in view of the strained relations between the parties. It is further pleaded that the learned counsel who was engaged to argue the Civil Second Appeal, Mr. Altaf Haqani, remained out of the country w.e.f. the month of November, 2025 till the month of February, 2026, and since the records of the case were with him, immediate steps could not be taken to file the application for substitution of legal heirs of respondent No. 7 and for seeking setting aside of the abatement of the appeal.

3 Respondents No. 1 to 6 and 8 to 11 have objected to the application seeking condonation of delay. It is submitted by the respondents that it is not true that the appellants acquired knowledge about the death of respondent No. 7 only when CM No. 6593/2025 was filed. The appellants had knowledge about the death of respondent No. 7, who belonged to the same village in which the appellants reside and was buried in the common graveyard. It is submitted that in the series of applications made during the pendency of the appeal, the information about the death of respondent No. 7 was sufficiently conveyed to the appellants. The plea of the appellants that prolonged litigation between the parties prevented them from

getting knowledge about the death of respondent No. 7 is factually incorrect for the reason that the parties reside in the same village and their residential houses are located adjacent to each other. The plea of the appellants that because of Mr. Altaf Haqani, learned counsel for the appellants, remaining out of the country for some time, the application could not be moved in time also cannot be accepted for the reason that Mr. Haqani was all along available in Srinagar till November, 2025 and also that such an application could have been filed by any lawyer in his office.

CM No. 1408/2026

4 This is an application for setting aside the abatement of the appeal on account of the death of respondent No. 7. In this application as well, the appellants claim to have acquired knowledge about the death of the deceased only when they received a copy of CM No. 6593/2025 filed by respondents No. 1 to 6 and 8 to 11. It is also pleaded that, as mandated by Rule 10-A of Order 22 CPC, the information was never given by learned counsel representing the deceased respondent about his death till he filed CM No. 6593/2025. It is submitted that the Civil Second Appeal was listed on a number of occasions, but the appearing respondents maintained calculated silence so as to allow the time to pass for filing an application for substitution of legal heirs. This application is also resisted by the appearing respondents on similar grounds as raised in CM No. 1407/2026.

CM Nos. 1409/2026 and 1410/2026

5 These are two applications filed by the appellants, one seeking condonation of delay of 72 days in filing the application for substitution of legal heirs of deceased respondent No. 7, and the other for bringing on record the legal heirs of respondent No. 7. These applications too have been opposed by the appearing respondents on the ground that the appellants, being aware of the death of respondent No. 7, took no steps for substitution of legal heirs within time and,

accordingly, by efflux of statutory time, the Civil Second Appeal as a whole abated. The appellants have not demonstrated any sufficient cause which prevented them from taking the requisite steps for substitution of legal heirs of respondent No. 7 within time.

6 Order XXII of the Code of Civil Procedure, 1908 [“CPC”] deals with “DEATH, MARRIAGE AND INSOLVENCY OF PARTIES". It stipulates the manner in which the legal representatives of a deceased party ought to be brought on record. A suit does not abate on the death of the plaintiff or defendant if the right to sue survives. Rule 4 of Order XXII of CPC deals with a situation where the right to sue does not survive in case of death of one of several defendants or of a sole defendant, with which we are confronted in these applications. Rule 4 reads thus:

> **“4. Procedure in case of death of one of several defendants or of sole defendant.**
>
> **(1)** Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.
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> **(2)** Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.
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> **(3)** Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.
>
> **(4)** The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant not withstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.
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> **(5)** Where-

> **(a)** the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 and the suit has, in consequence, abated, and
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> (b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 , for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved".

7 From a reading of Rule 4, it clearly transpires that where one of two or more defendants dies, and the right to sue does not survive against the surviving defendant, or where a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representatives of the deceased defendant to be made parties and shall proceed with the suit. Such application, if not made within the period of limitation, which under Article 120 of the Limitation Act, 1963 is 90 days, the suit shall abate as against the deceased defendant. However, where the plaintiff was ignorant of the death of the defendant and, because of that reason, could not make an application for substitution of the legal representatives of the deceased defendant within the prescribed period, and the suit, as a consequence whereof, has abated, the plaintiff may file an application within 60 days, as prescribed under Article 121 of the Limitation Act, for setting aside the abatement and if such application is also delayed, the plaintiff may move an application under Section 5 of the Limitation Act for condonation of delay. **Needless to say that by virtue of Rule 11**, **Order XXII applies to appeals as well.**

8 In the instant case, there is no dispute with regard to the fact that one of the respondents, i.e., respondent No. 7, died on 21.03.2020 and no application

was moved within the period of limitation for substitution of the legal representatives of respondent No. 7. By operation of sub-rule (3) of Rule 4 of Order XXII, the appeal as against respondent No. 7 abated after expiry of 90 days from the date of death. There was, however, no formal order of abatement passed by the Court. It is probably because of this reason that the surviving respondents filed a formal application, i.e., CM No. 6593/2025, for dismissal of the appeal as having abated against all the respondents on account of death of respondent No. 7.

9 It is on record that prior to filing of CM No. 6593/2025, the learned counsel appearing for the respondents had not performed the duty enjoined by Rule 10-A of Order XXII to communicate to the Court the death of his client, i.e., respondent No. 7. In the absence of such communication by the learned counsel appearing for the respondents, there was no occasion for this Court to put the appellants on notice about the death of respondent No. 7. The provisions of Rule 10-A came to be inserted by Section 73 of the Act 104 of 1976 w.e.f. 01.02.1977. The object behind introducing Rule 10-A in Order XXII CPC was to avoid unnecessary disputes of fact in relation to the death of a party. Since the learned counsel appearing for a party is the best person to know about the death of his client, he has been put under a duty to bring this fact to the notice of the Court so that the opposite party is informed. Admittedly, this duty does not seem to have been performed by the learned counsel appearing for the respondents, as a result whereof, nothing came on record with regard to the death of respondent No. 7 prior to the filing of CM No. 6593/2025, which was filed in this Court on 08.10.2025. Mr. G.A. Lone learned Senior Counsel appearing for the respondents invited attention of this Court to CM No. 4919 of 2024 filed on 12.08.2024, in which, against the name of respondent No. 7, the word “dead” has been indicated. This reference was done by the learned counsel for the respondents to impress upon this

Court that the surviving respondents had unequivocally conveyed to the appellants that respondent No. 7 was no longer alive.

10 From a perusal of CM No. 4919/2024, I find that a clever attempt was made by the surviving respondents to intimate the death of respondent No. 7 merely by putting the word “dead”. The font of the word “dead” is far smaller than the font used in the application as well as the title. This was done with a deliberate attempt to keep the appellants in the dark till the period of limitation expired and the appeal stood abated. That apart, mentioning the word “dead” in the smallest possible font against respondent No. 7, without indicating the day, month and year of death, cannot be said to be compliance with the duty enjoined upon the learned counsel by Rule 10-A of Order XXII.

11 That apart, even if we take the date of knowledge acquired by the appellants about the death of respondent No. 7 as the date of filing of CM No. 6593/2025, i.e., 08.10.2025, yet there is a delay of only 12 days in seeking setting aside of the abatement of the appeal.

12 I am convinced that the delay of 12 days has been satisfactorily explained by the appellants. Whether or not the appellants were aware of the death of respondent No. 7 is a disputed question of fact which cannot be gone into in these applications. It may be that the appellants and the deceased respondent were residents of the same village and, therefore, the appellants might have been aware of the death of respondent No. 7 yet, the fact remains that what course of action the appellants were required to be adopted, may not have been known to them. The niceties of law as to whether the appeal would proceed against the surviving respondents or would abate are also aspects which the appellants cannot be expected to be aware of. Had the learned counsel for the respondents communicated to the Court about the death of respondent No. 7 and the counsel for

the appellants would have been put on notice about such death, he would have definitely taken the requisite steps for substitution of the legal heirs within the prescribed period of limitation.

13 Viewed thus, I am of the considered opinion that if the date of knowledge regarding the death of respondent No. 7 is taken as 08.10.2025, the delay of 12 days in seeking setting aside of the abatement deserves to be construed liberally and condoned in the interest of justice. The expression "sufficient cause" occurring in Section 5 of the Limitation Act, in the context of abatement of suits and appeals, ought to receive a liberal construction so as to advance substantial justice, more particularly when the delay is not on account of dilatory tactics, want of *bona fides*, deliberate inaction, or negligence on the part of the appellants. While considering the reasons for condonation of delay, the Courts are generally more liberal in matters relating to setting aside abatement than in other cases. While the Courts must keep in mind that a valuable right accrues to the legal representatives of the deceased respondent once the appeal abates, but at the same time, the appellant ought not to be non-suited for unintended lapses resulting in foreclosure of the appeal. It is always the tendency of the Courts to set aside abatement and decide matters on merits rather than terminate the proceedings on technical grounds. In such matters, the decisive factor is not the length of delay but the sufficiency of satisfactory explaination.

14 There is enough indication in sub-rule 5 of Rule 4 of Order 22 which provides that where the appellant was ignorant of the death of a deceased respondent and, for that reason, could not make an application for substitution of legal representatives of the deceased respondent under Rule 4 within the time specified in the Limitation Act, 1963 and, in consequence, the appeal has abated and the appellant applies after the expiry of the period specified for setting aside the abatement and seeks aid of Section 5 of the Limitation Act on the ground that

he had, by reason of such ignorance, sufficient cause for not making the application within the prescribed period of limitation, the Court shall, in considering the application under Section 5 of the Limitation Act, have due regard to the fact of such ignorance if proved.

15 Rule 10-A of Order 22 casts an obligation on the pleader appearing for a party to a suit or an appeal to the extent that if he comes to know of the death of a party he is representing, he shall inform the Court about it and the Court shall thereupon give notice of such death to the other party. It is, thus, clear that when a respondent dies and an application to bring his legal representatives on record is not made, the appeal would abate on the expiry of the prescribed period of 90 days. The abatement is not necessarily dependent upon judicial adjudication or declaration. It would occur by operation of law, but nevertheless the abatement would require judicial cognizance to put an end to a case as having abated.

16 It is well settled that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics and seek their remedy promptly. There is no presumption that delay in approaching the Court is always deliberate. The Supreme Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive liberal construction so as to advance the cause of justice. It is, thus, important that the Courts construe the term “sufficient cause” in a reasonable, pragmatic, practical and liberal manner, of course, depending upon the facts and circumstances of the case and the type of the case.

17 I am of the considered opinion that in the matter of abatement, the words “sufficient cause” should receive a considerably more liberal approach.

18 Viewed thus, I am convinced that the appellants have made out a case for condonation of delay in filing the application for setting aside abatement. Accordingly, the delay in filing the application seeking setting aside of abatement as also for filing an application for substitution of legal heirs is condoned. The abatement of the appeal is set aside and the legal heirs of deceased No. 7 are taken on record. Consequently, all the applications are disposed of.

CSA No. 08/2013

19 Learned counsel for the appellants shall file a fresh memo of parties. Registry to issue notice to the substituted respondents in place of respondent No. 7 returnable within four weeks subject to taking requisite steps within two weeks.

List on 17.07.2026.

(SANJEEV KUMAR)
JUDGE

Jammu
29 .05.2026.
Sanjeev

Whether the order is reportable:**Yes**