

Bapurao vs Jamunabai And Ors. on 6 December, 1982

Equivalent citations: AIR1983SC186, 1982(2)SCALE1380, (1983)2SCC253, AIR 1983 SUPREME COURT 186, (1983) 1 APLJ 49.2, 1983 HRR 301, 1983 UJ (SC) 155, 1983 (1) RENTLR 665, 1983 (2) SCC 253, (1983) 2 DMC 447, (1983) HINDULR 436, (1983) JAB LJ 311

Bench: D.A. Desai, R.B. Misra

ORDER

1. Special leave granted.

2. Respondent No. 7, Diwakar Gaikwad in Second Appeal No. 297 of 1973 on the file of the High Court of Madhya Pradesh, Jabalpur died. The appellant (herein) came to know about his death when on the death of Respondent No. 1 Prabhudayal Gulhare, he went in search for ascertaining the names of the legal representatives of the deceased Respondent No. 1. An application under order XXII, Rule 9, Sub-rule (3) was filed for setting aside the abatement, if any, after condoning the delay and permitting substitution. The High Court was not satisfied with the reasons assigned for the delay in filing the application. While opposing the application for condoning the delay and bringing on record the legal representatives the respondent contended that deceased respondent No. 1 was a prominent citizen of Bilaspur and his death was reported in the newspapers and as the appellant was frequently visiting Bilaspur and he has a large number of relatives, he must be presumed to have come to know about the death of Respondent No. 1 and if this knowledge can be imputed, the appellant has failed to show that he was prevented by sufficient cause from moving the application for substitution within the prescribed period of limitation and Section 5 of the limitation Act cannot come to his rescue, and consequently no case is made out for condoning the delay. We are unable to appreciate that litigants are presumed to read newspapers so as to be aware of the death of prominent citizens from the obituary columns of leading national newspapers. And this was the only ground for declining to grant relief. It does not carry conviction. We are satisfied that the appellant had shown sufficient cause which prevented him from moving the application for substitution in time in the High Court and we accept the same as sufficient to condone delay. We accordingly condone the delay. We grant substitution. Consequently, the abatement, if any, will have to be set aside. Therefore, the disposal of the appeal by the High Court as having abated cannot stand in the way and must be quashed and set aside. We grant substitution after condoning the delay and remit the appeal to the High Court for disposal according to law on merits. However, having regard to the circumstances and facts of the case, even though we allow the appeal, we direct that appellant shall pay as asked by way of costs quantified of Rs. 1,000/-. The amount must be paid before the High Court proceeds to hear the appeal on merits.