

Bapurao

Vs

Smt. Jamunabai and Others

Civil Appeal No. 4093 of 1982

(D. A. Desai. R. B. Misra JJ)

06.12.1982

ORDER

1. Special leave granted.

2. Respondent 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 I Prabhudayal Gulhard, he went in search; for ascertaining the; names of the legal representatives of the deceased respondent. An application under Order 22. Rule 9, (3) was filed for setting aside the abatement, if any, after condoning the delay and permitting substitution. The High Court was n; 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 respondents contended that deceased respondent I 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 I 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 name as sufficient to condone delay. We accordingly condone the delay. We grant 5 substitution. Consequently, the abatement, if any, will have 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 laws on merits. However, d having regard to the circumstances and facts; of the case, even though we allow the appeal we direct the appellant shall pay as and by way of costs quantified at Rs. 1000. The amount must be paid before the High Court proceeds to hear the appeal on merits.

</html