

SUPREME COURT OF INDIA

Swami Prasad

Vs.

Lakhan Singh(D)

C.A.No.2163 of 2010

(R.V. Raveendran and K.S.Radhakrishnan JJ.)

08.03.2010

ORDER

1. Leave granted. Heard the learned counsel.

2. The appellants in Second Appeal No.25 of 1993 on the file of the High Court of Madhya Pradesh, Jabalpur are the appellants before us. The said Second Appeal, filed in 1993, after admission, was pending final hearing and was not being listed for hearing before the Court periodically. It is stated that the first respondent died on 28.5.1998. The appellants claim that they were unaware of his death.

“Nearly eight years later, on 1.8.2006, the counsel for the first respondent informed the Court about the death of his client. Unfortunately on that day, the counsel for the appellants was not present, and consequently the appellants were unaware of the death of the first respondent even after 1.8.2006. On 9.8.2007, the appeal was dismissed as having abated as the legal representatives of the deceased first respondent were not brought on record within the time prescribed. When the appellants came to know about it, they filed an application for setting aside the abatement and consequential restoration and to bring the legal representatives of the deceased first respondent on record.

Those applications were dismissed by the impugned order dated 19.9.2008.”

3. In *Perumon Bhagvathy Devaswom vs. Bhargavi Amma*¹, this Court has held that where a respondent dies during the pendency of the appeal, at a time when the appeal has been pending for several years without being listed for hearing, the Court should take a lenient view in considering the application for condoning delay and setting aside the abatement. This is more so because the counsel for first respondent informed the court about the death of first respondent (which was on 28.5.1998) only on 1.8.2006 nearly eight years after the death. The material showed that the appellants had no knowledge about the death.

4. We find that the appellants have explained the delay in filing the application for abatement. The appellants' counsel was absent on 1.8.2006, when first respondent's counsel informed the court about the death and therefore the delay after 1.8.2006 is also explained. On the facts and circumstances, we consider this a fit case where the High Court ought to have set aside the abatement.

5. We, accordingly, allow this appeal, set aside the impugned order dated 19.9.2008, restore the second appeal to the file of the High Court, set aside the abatement by condoning the delay and permit the appellants to bring the legal representatives of the deceased first respondent on record. We request the High Court to dispose of the second appeal expeditiously.

¹2008 (8) SCC 321