

ITEM NO.49

COURT NO.8

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4252/2020

(Arising out of impugned final judgment and order dated 25-09-2019 in CMA No. 7/2019 in Second Appeal No. 389 of 2001 passed by the High Court Of Judicature At Allahabad)

BACHAN SINGH (DEAD) THR. LR.

Petitioner(s)

VERSUS

CHANDRA BHUSHAN SINGH & ORS.

Respondent(s)

Date : 12-08-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE RAJESH BINDAL

For Petitioner(s) Mr. Tanmay Agarwal, Adv.
Mr. Shwetank Sailakwal, AOR
Mr. Mayank Suryan, Adv.
Mr. Aayushman Jauhari, Adv.

For Respondent(s) Mr. J.P. Tiwari, Adv.
Mr. Keshari Kumar Tiwari, Adv.
Mr. Nitesh Tiwari, Adv.
Dr. Vinod Kumar Tewari, AOR

UPON hearing the counsel the Court made the following
O R D E R

Arising out of an order passed on 25.05.2019 by the High Court in Second Appeal No. 389 of 2001 restoring the appeal allowing substitution and setting aside abatement, the plaintiff – respondents have approached by filing this Special Leave Petition.

Upon hearing learned counsel for the parties, we find that the First Appellate Court, vide Judgment dated 31.01.2001, allowed the appeal filed by Bachan Singh (deceased petitioner through legal heir

herein) setting aside the Judgment and Decree of the trial court in a suit for declaration and cancellation of Will. The respondents herein filed the Second Appeal against Bachan Singh. During pendency of the Second Appeal, he died on 08.09.2010. An application was filed by legal heirs for dismissal of the appeal 'as abated' on 11.09.2018. Later, the appellants filed the applications for condonation of delay, setting aside abatement and substitution on 03.11.2018 before the High Court.

Vide order dated 07.01.2019, the High Court dismissed the Second Appeal as abated. The relevant portion of the High Court order dismissing the appeal as abated is reproduced as under :-

“A perusal of the record reveals that the abatement application was filed on 11 September 2018 where after the substitution application was filed along with the delay condonation application on 3 November 2018. In paragraphs 6 and 7 of the affidavit filed in support of the delay condonation application, it has been stated the deponent is an old person aged about 56 years and suffers with old age ailments and that he is a rustic villager having no knowledge about legal procedure. The deponent could not intimate his counsel about the death of the

plaintiff/respondent, who is said to have died on 8 ~ September 2010. In the counter affidavit, it has been stated that there are four appellants, who are not only educated but are also litigious persons having knowledge of law. There has been inordinate delay of about eight years regarding which no explanation has been submitted. In paragraph 15, it has further been pointed out that though there are four appellants, no reason has been shown as to why none of the appellants had any knowledge of the death of the sole respondent Bachan Singh. Bachan Singh and the appellants were real brothers and lived in the same area. Even in the rejoinder affidavit, no cause has been proffered for the inordinate delay of about eight years other than the fact that the death of the sole respondent Bachan Singh was registered on 13 February 2018. There is also no denial that the deceased respondent and the appellants were brothers and lived in the same area. This Court, therefore, cannot but conclude that despite having full knowledge of the death of of the plaintiff-respondent, the appellants made no effort to contact their counsel or to move an appropriate application for bringing the heirs

of the deceased plaintiff-respondent on record. The affidavits filed by the appellants are silent in this regard. The judgments of the Supreme Court cited by the learned counsel for the appellants would not be of any help to them.”

The respondents herein filed the Special Leave Petition, being SLP (C) No. 7384 of 2019, which was dismissed vide order dated 29.03.2019. The said order is reproduced as under :-

“Delay condoned.

Substitution allowed.

Abatement, if any, set aside.

We find no reason to entertain this special leave petition, which is, accordingly, dismissed. Pending application (s), if any, shall stand disposed of.”

On perusal of the order, it reveals that the delay was condoned, substitution was allowed and abatement, if any, was set aside, meaning thereby condoning the delay, the abatement before this Court was set aside substituting the legal heirs of Bachan Singh. Otherwise, this Court has declined to interfere in the order of the High Court dated 07.01.2019 dismissing the Second Appeal as abated, and

rejecting the applications for substitution.

If we look the order impugned, allowing the application for condonation and setting aside abatement in the Second Appeal, it merely records a part of the order of this Court i.e. “*Delay was condoned, Substitution was allowed and Abatement, if any, was set aside*”,

The High Court has not referred the full order dated 29.03.2019, as quoted hereinabove. In our view, by the said order abatement, if any, during the pendency of the Second Appeal was not set aside by this Court.

In view of the foregoing discussion, the order passed by the High Court is by misreading the order and unsustainable. Accordingly, the impugned order passed by the High Court is set aside and this Special Leave Petition is allowed and disposed of. The Second Appeal be treated as ‘dismissed as abated’ as per the order dated 07.01.2019.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS

(ANU BHALLA)
COURT MASTER