

ITEM NO.1704

COURT NO.17

SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S).6502/2023

THE STATE OF UTTAR PRADESH & ORS.

Appellant(s)

VERSUS

SHANTI DEVI & ORS.

Respondent(s)

(IA No. 123654/2024 - APPLICATION FOR CONDONATION OF DELAY IN
 FILING THE APPLICATION FOR SETTING ASIDE THE ABATEMENT

IA No. 109592/2024 - APPLICATION FOR SUBSTITUTION

IA No. 109595/2024 - CONDONATION OF DELAY IN FILING SUBSTITUTION
 APPLN.

IA No. 109593/2024 - EXEMPTION FROM FILING O.T.

IA No. 123652/2024 - SETTING ASIDE AN ABATEMENT)

Date : 27-11-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANDEEP MEHTA
 [IN CHAMBERS]

For Appellant(s) Ms. Ruchira Goel, AOR

For Respondent(s) Mr. Deepak Tyagi, Adv.
 Mr. K.k.gautam, Adv.
 Mr. Rameshwar Prasad Goyal, AOR
 Mr. Deepak Tyagi, Adv.

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

IA Nos.109592, 109595, 123652 and 123654 of 2024

These three applications have been moved for substitution, condonation of delay in filing substitution application, setting aside abatement, and for condonation of delay in filing setting aside abatement.

2. The facts, relevant and essential for disposal of the applications, in brief, are noted as below:

3. The respondent No.1 (original plaintiff-Santi Devi) filed a suit bearing Suit No.609 of 1986 for eviction and injunction, which was dismissed by the Additional Civil Judge, Ghaziabad, vide judgment dated 22.10.1988 on the ground that the defendants had constructed a building (Dadri Police Station) over the property in dispute. Aggrieved thereby, Santi Devi preferred an appeal viz., Civil Appeal No.1137 of 1988, which was allowed by the Court of the I Additional District Judge, Ghaziabad vide judgment dated 27.05.1995 and the suit was decreed. It seems that in the interregnum, while the appeal was still pending, Santi Devi passed away (date of death 06.08.1994), as is evident from the death certificate placed on record in the application for substitution. However, the plaintiff/appellant's legal representatives were not brought on record of the proceedings before the first appellate court. The appellants herein filed a Second Appeal viz., S.A.NO.310 of 2013 being aggrieved by the judgment of the first appellate court. It seems that the legal representatives of Santi Devi were also impleaded as respondents in the said Second Appeal. However, it is not clear from the material placed on record as to in what capacity the legal representatives of Santi Devi were impleaded.

4. Be that as it may, a perusal of the Second Appellate Court's judgment, also does not make it clear as to whether the fact regarding passing away of Santi Devi was brought on record either by the appellants or by the respondents who were duly represented. The second appeal was dismissed by the learned single Judge of the High Court vide judgment dated 04.04.2013. It is in these circumstances that the instant Special Leave Petition came to be

filed by impleading Santi Devi and her Legal Representatives as well.

5. Notice on the Special Leave Petition was issued. The office report on the notices issued to the respondents revealed, for the first time, that Santi Devi had passed away and in this background, these applications have been moved on behalf of the appellants for substitution of the Legal Representatives of the respondent No.1 (deceased-Santi Devi). The Registry has pointed out a delay of 10775 days in the delay condonation application. The appellant-State has filed applications for setting aside of the abatement and condonation of delay of 10775 days in filing the application for setting aside of the abatement.

6. The prayers made in the applications are strenuously contested by learned counsel representing the respondents.

7. However, to a pertinent query being put by this Court, learned counsel for the respondents/plaintiffs, is not in a position to dispute that neither was the fact regarding the death of Santi Devi was brought to the notice of the first appellate Court by the time the first appeal came to be decided nor was such fact disclosed during the pendency of the second appeal before the High Court. Learned counsel for the respondents also admits that the legal representatives of Santi Devi are already arrayed as respondents in the second appeal as well as in the Special Leave Petition.

8. In this background, all the three applications are allowed. The delay in filing the application for setting aside abatement is condoned. The abatement is set aside and as a consequence, the

application for condonation of delay in filing the substitution application as well as the application for substitution are allowed.

9. Amended memo of parties be filed within a period of two weeks.

(B. LAKSHMI MANIKYA VALLI)
COURT MASTER (SH)

(RAM SUBHAG SINGH)
COURT MASTER (NSH)