IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 5017-5029/DHC/Gaz.IB/G-2/SC-Judgment/2026 Dated: 21.08.2026

From :

The Registrar General,
High Court of Delhi,
New Delhi.

To

1. The Principal District & Sessions Judge (HQ), Tis Hazari Courts Complex, Delhi.
2. The Principal District & Sessions Judge (North-West), Rohini Courts Complex, Delhi.
3. The Principal District & Sessions Judge (East), Karkardooma Courts Complex, Delhi.
4. The Principal District & Sessions Judge (North-East), Karkardooma Courts Complex, Delhi.
5. The Principal District & Sessions Judge (North), Rohini Courts Complex, Delhi.
6. The Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), RACC, New Delhi.
7. The Principal District & Sessions Judge (New Delhi), Patiala House Courts Complex, New Delhi.
8. The Principal District & Sessions Judge (Shahdara), Karkardooma Courts Complex, Delhi.
9. The Principal District & Sessions Judge (South-West), Dwarka Courts Complex, New Delhi.
10. The Principal District & Sessions Judge (South), Saket Courts Complex, New Delhi
11. The Principal District & Sessions Judge (West), Tis Hazari Courts Complex, Delhi.
12. The Principal District & Sessions Judge (South-East), Saket Courts complex, Delhi.
13. The Principal Judge (HQ), Family Courts, Dwarka, New Delhi.

Sub : Order dated 17.07.2026 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 9807 of 2026 titled *"Bishen Prasad Tiwari vs. Sheela Devi"*.

Sir/ Madam,

I am directed to request you to kindly download the reportable order dated 17.07.2026 [redacted] on Supreme Court of India in Civil Appeal No. 9807 of 2026 titled *"Bishen Prasad Tiwari vs. Sheela Devi"* from the official website of Supreme Court of India and circulate the same amongst all the Judicial Officers working under your respective control for information and necessary compliance.

Yours faithfully,

21/08/26

(Sunil Singh Negi)
Deputy Registrar (Gazette-IB)
For Registrar General.

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. 38503-586 .....Genl.I/3-A/N-W & N/RC/2026 Dated 25/08/26

Copy alongwith its enclosures **(through electronic mode)**, forwarded for information & necessary action, to :-

1. All Ld. Judicial Officers posted at **N/W & North**, Rohini Courts, Delhi.
2. Dealing Official, Computer Branch, Rohini Courts for uploading the same on WEBSITE.
3. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.

25/8/26

(RAJANI RANGA)
Officer In-Charge, General Branch-I
North-West & North District,
Rohini Court Complex, Delhi.

2026 INSC 760

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.....of 2026
(@Special Leave Petition (C) No.28454 of 2024)

Bishen Prasad Tiwari

...Appellant

Versus

Sheela Devi

...Respondent

O R D E R

1. Leave granted.

2. Procedure, as is trite, is the handmaiden of justice, but in law, it cannot be treated as a lowly servant and ignored altogether; especially if substantial rights are involved, since it makes justice delivery even handed.

3. Shorn of the facts, a delay of 501 days occurred in filing the application for setting aside abatement and impleading the legal representatives (LRs), to substitute the deceased first appellant in an appeal. The Appellate Court found by Annexure P10 order that Rule 9(3) of Order XXII of the Code of Civil Procedure, 1908 (CPC) clearly makes applicable Section 5 of the Limitation Act to applications under Rule 9(2). Hence, any person seeking relief

of condonation of delay ought to file a petition under Section 5 of the Limitation Act along with an application to set aside abatement. No such application was filed and the grounds stated for the delay of 501 days as discernible from the application for setting aside abatement, produced as Annexure P7, was that the Advocate who was engaged was pre-occupied with personal work. The absence of an application for condonation of delay coupled with the vague grounds stated, resulted in the rejection of the application.

4. The High Court in the impugned order relying on ***Mithailal Dalsangar Singh & Ors. v. Annabai Devram Kini & Ors.***[1] found that Courts of law should not be hyper technical and held the dictum of the cited decision; of liberally construing setting aside of an abatement, equally applying to the present case. The liberal construction applies *mutatis mutandis* while considering the setting aside of abatement and impleading the LRs, without an application for condonation of delay, especially when the application set out the grounds for delay, held the impugned order; to which we cannot concur. The High Court

[1] (2003) 10 SCC 691

found that the reason stated of the delay caused by the Advocate should not prejudice the litigant. A cost of Rs.25,000/- was ordered to be paid to the opposite party and the appeal was directed to be considered after setting aside the abatement and making necessary corrections in the cause title of the appeal, on the above terms

5. In ***Mithailal Dalsangar Singh***[1] a suit for specific performance filed by three plaintiffs was dismissed as abated on the death of one of the plaintiffs, the other plaintiffs having not impleaded the LRs of the deceased. With considerable delay the LRs filed an application to implead themselves and condone the delay in approaching the Court. The defendants contented that the cause of action arising to the plaintiffs was only one and on failure to implead the LRs within the time provided, there could be no restoration of the suit without the other plaintiffs also praying for setting aside the abatement. It was held that if the application filed, prayed for a simpliciter substitution of the LRs of the deceased, without praying for an order to set aside abatement, in substance the prayer made can be construed as one, also to set aside abatement. Similarly a prayer for setting

aside abatement by the LRs of one of the plaintiffs can be construed as a prayer for setting aside the abatement in its entirety; the benefit inuring to the other plaintiffs too.

6. We heard Sri Mahabir, learned counsel appearing for the appellant and Ms. Soumya Chakraborti, learned Senior Counsel appearing for the respondent.

7. We are surprised that the impugned order casually dealt with the matter especially when substantive rights were involved. The delay caused in praying for setting aside abatement and impleadment of LRs, which also extended to 501 days, within which time the parties would have acted in pursuance of the judgment and decree, especially when a second appeal filed by the other defendant was dismissed by the High Court. The order dismissing that second appeal was taken note of in the impugned judgment and the same held *non est* thus giving a fresh lease of life to the first appeal in its entirety. We have to immediately notice that the appellant herein does not challenge the said direction since only one LR of defendant No.1 is made a party herein, the other LR having died

in the meanwhile, survived only by the LR shown as the sole respondent in this appeal.

8. The chronology of events to be noticed are that the suit was decreed by the Civil Judge (Senior Division), South Andaman District, Port Blair on 29.09.2014 and a Title Appeal No.19/2014 was filed before the District Court, Andaman and Nicobar Island, Port Blair, which affirmed the judgment and decree of the Civil Court on 10.09.2015. The first defendant who was the first appellant died on 08.04.2015, prior to even commencement of the arguments in the appeal on 13.07.2015 and conclusion of hearing on 15.07.2015. A second appeal filed by one of the defendants was dismissed on 19.11.2015 as is seen from Annexure P4. Later, a second appeal was filed by the LRs of the first appellant in which the LRs of the first defendant were directed to file a necessary application under Order XXII Rule 9 of the CPC.

9. ***Mithailal Dalsangar Singh***[1], held that the application for substitution, if in substance can be construed as a prayer for setting aside the abatement and the abatement is set aside against one of the plaintiffs, then the abatement in its entirety

would be set aside. Rule 3 (1) of Order XXII provides that where a plaintiff amongst two or more dies and the right to sue does not survive on the surviving plaintiff/s, or if the sole plaintiff dies and the right to sue does survive; on an application made to implead the LRs the Court shall do so and proceed with the suit. Rule 3(2) mandates that such an application should be filed within the time limited by law and if not, the suit shall abate insofar as the deceased. Rule 11 provides that this order shall apply to appeals and the words plaintiff, defendant and suit includes respectively an appellant, respondent and appeal. Rule 9 restricts a fresh suit on the same cause of action when a suit abates or is dismissed under Order XXII and sub-rule (2) provides that if sufficient cause is shown for not being able to continue the suit, the LRs of the deceased plaintiff may apply for setting aside abatement or dismissal on such terms; for which purpose sub-rule (3) makes applicable Section 5 of the Limitation Act. Hence, going by the limitation provided under law, when a party to a suit or appeal dies, Article 120 of the Schedule to the Limitation Act provides a period of 90 days for the LRs of the deceased to come on record and be substituted for the deceased. Article 121 provides that an

application to set aside an abatement is to filed within 60 days from the date of abatement.

10. Looking at the provisions of the CPC and the Limitation Act, on the death of a party, whether it be a suit or an appeal, the LRs as of right can come on record within 90 days, through an application for impleadment and substitution in place of the deceased. However, if such an application is not made within 90 days, within a further period of 60 days an application for impleadment or substitution can be made, with an accompanying application for setting aside abatement, which also has to indicate sufficient cause for not having approached the Court within the initial period of 90 days. Since sub-rule (3) of Rule 9 makes applicable Section 5 of the Limitation Act even after 150 days from the death of the party, LRs can approach the Court with sufficient reasons for the delay, to the satisfaction of the Court. An application to condone the delay beyond the period of 150 days has to be separately made since it would impinge upon the substantive rights acquired by the opposing party to the litigation by sheer passage of time; also by virtue of the Limitation Act.

11. In this context, we rely on ***Balwant Singh (Dead) v. Jagdish Singh and Ors.***[2], which considered the issue with respect to condonation of delay for setting aside an abatement. It was held that the term '*sufficient cause'* though has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. It was held so in paragraph 26 :

> ***"26.*** *The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."*

[2] (2010) 8 SCC 685

12. ***Balwant Singh***[2], on facts found the application filed to be lacking in details to hold that '*liberal construction cannot be equated with doing injustice to the other party*' (para 27). The very liberal approach canvassed with respect to Order XXII Rule 9 of the CPC read with Section 5 of the Limitation Act, irrespective of the period of delay, it was held, amounts to rendering all the provisions redundant and inoperative. '*Sufficient cause*' according to the learned Judges presupposes absence of negligence or inaction on the part of the applicant and implies legal and adequate reasons. The test was held to be whether the delay could have been avoided by the party with exercise of due care and attention; reiterating the trite principle that law favours the diligent and not the indolent.

13. ***Union of India v. Ram Charan (Deceased) Through His Legal Representatives***[3], also held so :

> ***"8.*** *There is no question of construing the expression "sufficient cause" liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course, the court, in considering whether the*

[3] AIR 1964 SC 215

appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This, however, does not mean that the court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement."

14. Section 5 of the Limitation Act cannot be applied in a vacuum especially when the provision specifically provides for sufficient cause to condone the delay in approaching the Court, to the satisfaction of the Court. In the context of Order XXII, we have to reiterate that though the LRs, as a matter of right could seek impleadment and substitution in place of the deceased litigant within 90 days of the death, by an application made to that end, when it is beyond 90 days, but within 60 days, the

applicant has to prove that there was sufficient cause for not approaching the Court within the initial 90 days. Similarly when a further delay is occasioned, where Section 5 of the Limitation Act is invoked, there should necessarily be a separate application filed accompanying an affidavit showing sufficient reasons for condoning the delay, to the satisfaction of the Court.

15. In the present case, the application for impleading and setting aside abatement were filed as per Annexure P6 & P7 with accompanying affidavits. In Annexure P7, there was a cryptic reason stated of the Advocate engaged having been pre-occupied. There is no prayer made for condonation of delay, either in the application or the affidavit accompanying the said application; which in any event has to be made through a separate application. We hence find the Appellate Court to have rightly rejected the application on the ground of absence of an application for condonation of delay.

16. That having been said, we have to notice the various dates once more to find out whether there is just cause to implead the LRs, despite the delay occasioned. The applications filed as Annexure P6 & P7 indicates that the applicants were the

daughters of the first defendant, who due to the strained relationship with the first defendant, was not aware of the suit or the appeal filed. Only when a notice dated 15.10.2015 was received from the Tehsildar, Port Blair, the applicants for the first time came to know about the suit, the judgment and decree passed and the rejection of the appeal. The second appeal was filed in 2015 itself as is discernible from the number assigned of that year, as evident from Annexure P5. The second appeal stood disposed of on 13.06.2016 directing the appellants to approach the Appellate Court. Annexure P6 & P7 indicates that they approached the Appellate Court on 23.08.2016 within two months and ten days of the disposal of the second appeal. Hence, the knowledge of the parties far later to the disposal of the first appeal, in the year 2015 having not been controverted by the plaintiff/respondent, we find absolutely no reason to upset the directions in the impugned order.

17. In the totality of the circumstances, we do not find any reason to interfere with the operative portion of the impugned judgment directing the LRs to be impleaded and substituted in place of the deceased 1st appellant, while not agreeing with the

reasoning in the impugned judgment. On the reasoning supplied by us we uphold the directions, leading to restoration of appeal, impleadment of the LRs of the deceased first appellant and consideration of the appeal on merits, on terms of payment of Rs.25,000/- as cost.

18. The appeal stands disposed of on the above terms.

19. Pending application(s), if any, shall also stand disposed of.

20. Registry shall forward one copy each of this order to all the High Courts.

..... J.
(J.B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI
JULY 17, 2026.

ITEM NO.48 COURT NO.6 SECTION XVI

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

Petition for Special Leave to Appeal (C) No.28454/2024

[Arising out of impugned final judgment and order dated 13-11-2024 in CO No. 42/2024 passed by the High Court of Calcutta Circuit Bench at Port Blair]

BISHEN PRASAD TIWARI Petitioner(s)

VERSUS

SHEELA DEVI Respondent(s)

[TO BE TAKEN UP AT TOP OF THE BOARD] [FOR FINAL DISPOSAL]

Date : 17-07-2026 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) :Mr. Mahabir, Adv.
Mr. Gopala Binnu Kumar, Adv.
Mr. Samant Singh, Adv.
Ms. Anu H Kirutthika, Adv.
Mr. Rajeev Singh, AOR

For Respondent(s) :Mr. Soumya Chakraborty, Sr. Adv.
Mr. Subodh S. Patil, AOR

UPON hearing the counsel the Court made the following

O R D E R

1. Leave granted.

2. The appeal is disposed of in terms of the signed reportable order.

3 Pending application(s), if any, shall also stand disposed of.

(CHANDRESH)
SR. ADDITT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

(signed reportable order is placed on the file)

Signature Not Verified
Digitally signed by SACHIN KUMAR SRIVASTAVA
Date: 2026.07.31 16:17:55 IST
Reason: