premises on the date aforesaid the petitioner in a way was restrained from filing ejectment application earlier. Be that as it may, in the circumstances aforesaid no contempt of Court was made out. Even otherwise the alleged compromise was not recorded in accordance with the Order XXIII Rule 3 of the Code of Civil Procedure which require the compromise to be in writing to be executed to be acted upon by the Court. In the present case in fact the Court did not act upon the aforesaid undertaking. No order was passed on that undertaking and none was required to be passed as the suit was liable to be dismissed as withdrawn which was filed by the tenant. It is not considered appropriate to proceed with this contempt petition which is dismissed. No costs.

P.C.G.

Before : A. L. Bahri, J.

JAI RAM (DECEASED) AND OTHERS,—*Appellants.*

versus

JAGAT RAM AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1349 *of* 1990

9th November, 1990

Code of Civil Procedure, 1908 (*Act V of* 1908)—*O.* 22, *Rl.* 3 & 9—*Limitation Act* (*XXXVI of* 1963)—*S.* 5—*Setting aside of abatement—Application filed after one year—Applicant should show sufficient cause—Application for condonation of delay filed pleading ignorance of law—Ignorance of law held not to be sufficient cause—Abatement is automatic.*

Held, the Civil Procedure Code having been amended as far as bringing on record the legal representatives of the defendants or the respondents for the disposal of the matter without bringing such legal representatives on the record; whereas position of the case where plaintiff or the appellant had died and legal heirs are not brought on record and there is abatement, is different and continues to be as before. The abatement is automatic, if legal heirs are not brought on record on the death of the plaintiff or the appellant. It is in that sense that it is to be examined as to whether sufficient

cause has been shown for not filing the application for bringing on record legal representatives within the period prescribed. In other words, whether the applicant was prevented by sufficient cause from filing such an application.

(Para 3)

Held, that the appellant had no knowledge that legal representatives of the deceased-appellant were to be brought on record. They had also no knowledge of the period of limitation. In substance, the allegation is based on ignorance of law which is not a cause much less sufficient cause for not approaching the Court within time.

(Para 4)

Regular Second Appeal from the decree of the Court of S. Hardev Singh, Addl. District Judge, Ropar, dated the 5th day of August, 1978 modifying on appeal filed by Jagat Ram and others, that of S. Balbir Singh, Sub Judge Ist Class, Kharar, dated the 27th March, 1978 (decreeing the suit of the Plaintiffs against the defendants for possession as owners of land measuring 20 Kanals out of the suit land as fully described in the head-note of the plaint situated in village Jhanpur, Tehsil Kharar, District Ropar, leaving the parties to bear their own costs) to the extent that the suit of the plaintiffs for possession as owners of the suit land stands decreed, leaving the parties to bear their own costs.

Gurdial Singh Jaswal, Advocate, *for the Appellants.*
I. S. Saini, Advocate, *for the Respondents.*

JUDGMENT

A. L. Bahri, J.

(1) Above appeal is pending in this Court since 1978. Jai Ram one of the appellants died a year ago. An application under O. 22 R. 3 and 9 of the Code of Civil Procedure for setting aside the abatement and bringing on record legal heirs of Jai Ram along with another application filed under Section 5 of the Limitation Act for condoning the delay in moving the aforesaid application for setting aside abatement were filed. The ground for condoning the delay, as alleged is that on August 6, 1990 when the case was listed for hearing, Clerk of Counsel for the appellant gave intimation to the appellant. Balbir Singh son of Jai Ram respondent when came to Chandigarh and informed about the death of Jai Ram which had taken place a year ago. He was directed to get power of attorney of the legal heirs of Jai Ram. The appellants were not aware of the legal complication that the legal heirs of the appellant were to be brought on record. They were also not aware of the period of limitation. Controverting the allegations made in the application, the

respondents asserted that the appellants were educated persons and the assertions made were wrong. I have heard counsel for the parties.

(2) The contention of the learned counsel for the appellants is that while interpreting Section 5 of the Limitation Act, the Courts have been liberal and the application aforesaid should be allowed. In support of this contention, he has relied upon the decision of Gujarat High Court in *M/s. Mohatta Brothers Ahmedabad* v. *Sheth Chaturbhaidas Chiman Lal and others* (1). It was observed that the party seeking condonation of delay must show "sufficient cause" for execusing the delay and that in dealing with such an application the Court should take a liberal view and should not be over-strict and highly technical so as to sacrifice the cause of substantial justice. It was further observed that at the same time if there is gross negligence or inaction indicative of desire on the part of the plaintiff to abandon the cause or give up the litigation, the Court would be justified in refusing to condone the delay. On the other hand, the learned counsel for the respondents has relied upon the decision of Madhya Pradesh High Court in *Manorama* v. *Chittar and other* (2). In that case it was held that abatement has to be set aside by the Court only if it is proved that the party was prevented by any sufficient cause. It is for the applicant to prove absence of want of care and negligence on his part. Such an application cannot be allowed or dismissed by taking recourse to conjectures. Applicaiton under Section 5 of the Limitation Act has to be allowed in the discretion of the Court and such discretion is to be exercised only if the applicant satisfies by a sufficient cause for not making the application within the prescribed period. The matter was considered by the Supreme Court in *Sital Prasad Saxena (Dead) by LRs* v. *Union of India* (3), wherein it was observed that there was no question of construing the expression 'sufficient cause' liberally. The Court need not be over-strict in accepting such proof of the suggested cause as it would accept for holding certain facts established, one of the reasons being that the question does not relate to the merits of the dispute between the parties. The Court is not to accept readily whatever is alleged to explain away his default. It has to scrutinize the allegations and it will be fully justified for considering the merits of the evidence led to establish the cause for the delay in applying within time, for impleading the legal heirs of the deceased or for setting aside the abatement.

(1) A.I.R. 1982 Gujarat 96.
(2) A.I.R. 1990 M.P. 112.
(3) A.I.R. 1985 S.C. I.

(3) Some other cases have also been cited at the bar, but those cases relate to bringing on record legal representatives of the defendants or the respondents. These cases are *Bhagwan Swaroop and others* v. *Mool Chand and others* (4) and *Ram Sumiran and others* v. *D.D.C. and others* (5). The Civil Procedure Code having been amended as far as bringing on record the legal representatives of the defendants or the respondents for the disposal of the matter without bringing such legal representatives on the record; whereas position of the case where plaintiff or the appellant had died and legal heirs are not brought on record and there is abatement, is different and continues to be as before. The abatement is automatic, if legal heirs are not brought on record on the death of the plaintiff or the appellant. It is in that sense that it is to be examined as to whether sufficient cause has been shown for not filing the application for bringing on record legal representatives within the period prescribed. In other words, whether the applicant was prevented by sufficient cause from filing such an application.

(4) What is asserted in the present case is that the appellant had no knowledge that legal representatives of the deceased-appellant were to be brought on record. They had also no knowledge of the period of limitation. In substance, the allegation is based on ignorance of law which is not a cause much less sufficient cause for not approaching the Court within time. In this very case earlier, Jagat Ram, one of the respondents had died and in May 1989 an application was filed and disposed of by bringing on record his legal heirs. Now the appellants cannot say that they had no knowledge that the legal representatives of the deceased party were to be brought on record.

(5) The further question for consideration is that as to whether the appeal as a whole abates on the death of appellant Jai Ram. The suit was filed by Jagat Ram, Jagdish and Nathu for possession of land measuring 42-K, 3-M, claiming to be owners. The suit was decreed with respect to land meansuring 20-Kanals by the trial Court. The appeal filed by Jai Ram was dismissed, that is how the Regular Second Appeal is pending in this Court. Appeal was filed by Jai Ram and Piara Singh sons of Attra. Since the judgment and decree already passed has become final *qua* Jai Ram, and his legal

(4) A.I.R. 1983 S.C. 355.
(5) 1985(1) C.L.J. 652 (S.C.).

heirs, the appeal cannot proceed *qua* interest of Hara Singh, as it would result in passing conflicting decrees. Such a course has to be avoided, as held in *Godha Ram and others* v. *Chuhara Ram and another* (6).

(6) For the reasons recorded above, both the applications are dismissed with no order as to costs. With the result, Regular Second Appeal is also dismissed with no order as to costs. C.M. 2640-C of 90 stands dismissed.

P.C.G.

Before : Harbans Singh Rai, J.

NIRMAL SINGH,—*Petitioner.*

versus

UNION TERRITORY, CHANDIGARH,—*Respondent.*

Criminal Misc. No. 1541-M of 1990.

6th June, 1990

Prevention of Food Adulteration Act, 1954—Ss. 9 and 20(1)—Notification authorising Food Inspectors to take samples and institute prosecution—Such notification issued by Chief Commissioner, Chandigarh—Validity of such notification.

Held, that at all relevant times, the Administrator of Union Territory, Chandigarh appointed by the President under Article 239 of the Constitution of India was called the Chief Commissioner and that the Administrator, Union Territory, Chandigarh is the Central Government. The Food Inspector who took the sample was appointed by the appropriate Government under Section 9(1) of the Act and that the prosecution was initiated by a person duly authorised to do so under Section 20(1) of the Act.

(Paras 6 & 8)

Petition u/s 482 Cr. P. C. praying that the complaint Annexure P-1 may kindly be ordered to be quashed and the prosecution of petitioner resulting into order. Annexure P-2 may kindly also be set-aside as the same is based on the notification made by the Chief Administrator, Chandigarh which is bad and is not in compliance

(6) 1966—1968 Supplement P.L.R. 415.