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**(2006) 07 AP CK 0099**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 2951 of 2006**

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|--------------------------------------|----|------------|
| New Matching Centre and Others       | Vs | APPELLANT  |
| Bankatlal (died) Per LRs. and Others |    | RESPONDENT |

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**Date of Decision :** 07-07-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10A  
Limitation Act, 1963 — Section 5

**Citation :** (2006) 5 ALD 21 : (2006) 5 ALT 490

**Hon'ble Judges :** L. Narasimha Reddy, J

**Bench :** Single Bench

**Advocate :** Venkataraghu Ramulu, for the Appellant; Sharad Sanghi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

L. Narasimha Reddy, J.—Petitioners are tenants, in respect of non-residential premises, owned by the deceased-1st respondent. The latter filed R.C. No. 398 of 2001, for eviction of the petitioners from the premises bearing D. No. 14-4-394, Begum Bazar, Hyderabad, on the grounds of wilful default and bona fide requirement. The application was resisted by the petitioners. Through its order dated 27-9-2003, the learned Rent Controller allowed the R.C., and directed eviction of the petitioners. Aggrieved thereby, the petitioners filed R.A. No. 290 of 2003, before the Additional Chief Judge, City Small Causes Court, Hyderabad. During the pendency of the appeal, the 1st respondent-landlord died in September 2005. The petitioners did not take immediate steps, to bring the legal representatives of the deceased-landlord, on record. At a subsequent stage, they filed I.A.No. 90 of 2006, u/s 5 of the Limitation Act, to condone the delay of 175 days, in filing an application to set aside the abatement, and to bring the respondents 2 to 5 herein, on record. The respondents opposed the application, and the lower appellate Court dismissed the IA, on 15-6-2006. Hence, this CRP.

2. Sri Venkat Raghu Ramulu, learned Counsel for the petitioners, submits that

the delay in filing the applications to set aside the abatement and to bring the legal representatives of the deceased-sole respondent in the appeal, on record, occurred on account of the fact that the petitioners were not aware of the date of death, or the particulars of the legal representatives. He submits that the Counsel for the sole respondent, in the appeal, did not file a memo or give any intimation, as required under Rule 10A of Order XXII CPC

3. learned Counsel for respondents 2 to 5, on the other hand, submits that the premises is part of the residential house, in which the respondents are residing, and that the 1st respondent died in the said premises. He contends that the petitioners are not only aware of the death of the deceased, but also participated in various ceremonies performed thereafter. He submits that the proceedings under the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, for short "the Act", are governed by separate set of rules, and Rule 10A of Order XXII CPC has no application to it.

4. The Act makes it amply clear that the procedure prescribed under CPC would govern the proceedings thereunder, only to the extent specific provisions are not made under the rules. The entire procedure prescribed under CPC per se, cannot be applied to the proceedings under the Act. Rule 19 mandates that whenever a party to the proceedings dies, an application to bring the legal representatives, must be filed, within 30 days. Limitation prescribed under Order XXII CPC for this purpose, is 60 days. When a special provision governs the proceedings, the general procedural law cannot be applied.

5. Even assuming that though not the entire Order XXII C.P.C, but the principle underlying Rule 10A thereof, applies to the proceedings under the Act also, it needs to be observed that the said principle gets attracted, only when a party to the proceedings was not aware of the date of death of the other party. If such a party had knowledge of the death of his opponent, he does not have to wait till an intimation is given, under Rule 10A of Order XXII CPC Such an interpretation would turn out to be counter productive, and would defeat the very object underlying the provision.

6. It is not in dispute that the premises in question abuts the residential house, in which the deceased-1st respondent and his family was residing. The specific averment of the respondents that the petitioners were aware of the death of the deceased-1st respondent, and in fact, they have participated in the various ceremonies, has not been rebutted. The lower appellate Court had discussed the matter from the correct perspective, and this Court does not find any basis to interfere with the order under revision.

7. The CRP is accordingly dismissed. The petitioners are granted time till 31-3-2007, to vacate the premises, subject to the condition that they shall file an undertaking before the appellate Court, within one month from today, to the effect that they shall put the respondents in the vacant possession of the premises, on or before that date, and that they shall pay the rents regularly, till

that date. There shall be no order as to costs.