

**(2017) 05 SHI CK 0041**  
**In the High Court Of Himachal Pradesh**  
**Case No : 129 of 2017**

PRITAM LAL

APPELLANT

Vs

HIMACHAL PRADESH STATE ELECTRICITY BOARD & ORS

RESPONDENT

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**Date of Decision :** 24-05-2017

**Acts Referred:**

**Citation :** (2017) 05 SHI CK 0041

**Hon'ble Judges :** Dharam Chand Chaudhary

**Bench :** Single Bench

**Advocate :** Dibender Ghosh, Vivek Sharma

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## Judgement

1. Shri Ashok Kumar alias Amar Lal was plaintiff No. 2 in the suit whereas appellant No. 2 in the appeal filed before learned Lower Appellate Court. Interestingly enough, he, however, has not been shown to be a party in the present appeal may be on account of his death during the pendency of the appeal in the Lower Appellate Court.

2. Mr. Dibender Ghosh, Advocate, learned Counsel submits that aforesaid Ashok Kumar has expired on 21.9.2015 i.e. during the pendency of the appeal in the Lower Appellate Court. Averments to this effect find mention in para-6 of the grounds of appeal. The death certificate is also annexed as Annexure A-1 to the grounds of appeal, meaning thereby that the impugned judgment and decree having been passed against a dead person is nullity.

3. Be it stated that the appeal is not yet admitted and presently at the stage of admission.

4. Shri Ashok Kumar, plaintiff No. 2 had passed away on 21.9.2015 i.e. before the pronouncement of the judgment by the Lower Appellate Court. The appeal, however, has been dismissed by learned Lower Appellate Court without taking note of his death vide judgment and decree impugned before this Court in the present appeal. The impugned judgment, therefore, admittedly is against a dead person, i.e. plaintiff No. 2 Shri Ashok Kumar. There is no quarrel so as to he died

well before the pronouncement of the judgment by the Lower Appellate Court.

5. Whether the appeal on the death of plaintiff No. 2 herein stands abated for want of consequential steps by the surviving appellant or his legal representatives or not, is a question which can only be gone into and determined by learned Lower Appellate Court alone. No doubt, copy of the death certificate of deceased plaintiff No. 2 Ashok Kumar has also been filed along with the present appeal. However, such material placed on record cannot be looked into by this Court. The appellant rather may bring the same on the record of Lower Appellate Court and to seek substitution of legal representatives of deceased plaintiff No.2 Ashok Kumar there.

6. Law on the point in issue is no more res integra as a Co-ordinate Bench of this Court in Jagan Nath and others versus Smt. Ishwari Devi, 1988 (2) Shim. L.C. 273, has held that the question of substitution of legal representatives of a deceased party and the abatement of the suit/appeal for want of consequential steps has to be decided by that very Court where at the time of death of such party the lis was pending.

7. A Co-ordinate Bench of this Court, in Karam Chand and others versus Bakshi Ram and others, 2002(1) Shim. L.C. 9 has again held as under: "4. In the given circumstances of the case, one of the questions which arises for determination is as to the effect of death of Pohlo Ram and not bring on record his legal representatives in the appeal before the lower appellate Court or in other words, the questions now involved in the matter are as follows:

(i) Whether the appeal before the lower appellate Court had abated, if so the effect and extent of the abatement;

(ii) Whether the abatement should be set aside or not; and

(iii) Whether the legal representatives of the deceased may be allowed to be brought on record or not?

5. It is well settled that as and when the questions, as foresaid, arise in relation to a suit or appeal, at the first instance, these are to be decided by the Court in which the suit or appeal was pending at the time of the death of the party and abatement, if any, took place."

8. In view of the legal as well as factual position discussed hereinabove, this Court is not left with any other and further option except to allow this appeal and set aside the impugned judgment and decree being nullity and remand the case to the Lower Appellate Court for deciding the question of substitution of legal representatives of deceased plaintiff No. 2 Ashok Kumar and that on his death the appeal stands abated or not and thereafter to dispose of the same afresh on merits after deciding such questions.

9. For all the reasons hereinabove, the impugned judgment and decree is quashed and set aside. The case is remanded to the Lower Appellate Court for

disposal afresh in accordance with law. The parties through learned Counsel representing them are directed to appear before learned Lower Appellate Court on 7th July, 2017.

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

11. An authenticated copy of this judgment be sent to learned Lower Appellate Court for being taken on record and compliance.