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**(1977) 02 KAR CK 0027**  
**In the Karnataka High Court**

The State of Karnataka

APPELLANT

Vs

R.Y. Hulkoti

RESPONDENT

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**Date of Decision :** 25-02-1977

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18  
Limitation Act, 1963 — Section 121, 171

**Citation :** AIR 1977 Kar 119 : (1977) ILR (Kar) 961 : (1977) 1 KarLJ 281

**Hon'ble Judges :** B. Venkataswami, J

**Bench :** Single Bench

**Advocate :** N. Basavaraju, Government Pleader, for the Appellant; R.U. Goulay, for the Respondent

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## Judgement

1. since the parties and questions arising are common to these two appeals, they are disposed of by a common judgment. They are by the State of Karnataka represented by the Land Acquisition Officer, Dharwar, and against the order passed on I. As. II and III, in Miscellaneous Appeals 21 and 22 of 1973 on the file of the Second Additional District Judge, Dharwar, whereby lie has refused to set aside abatement and permit the legal representatives of the respondent to be brought on record.

2. The miscellaneous appeals in question have been preferred by the State, being aggrieved by the awards made by the Civil judge on a reference under S. 18 of the Land Acquisition Act, it would appear that when they were pending the respondent-claimant died on 17-4-1974. The appellant-State came to know of it only on 6-6-1974 through a memo filed by the counsel for the deceased respondent. Thereupon the appellant made enquiries and after verifying the fact of death of the respondent and ascertaining the names and addresses of his legal representatives, filed applications under Rr. 4 and 9 of order 22 C.P.C. on 17-9-1974. The learned district judge dismissed the applications holding inter alia, that the grounds urged in support of the application for setting aside abatement were vague and insufficient. Hence the appeals.

3. At the outset, it would be relevant to refer to certain enunciations contained in two of the decisions of the Supreme Court, which have a bearing on the question on hand. In Union of India (UOI) Vs. Ram Charan and Others, it is enounced thus: -

"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 imp leading 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 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 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 imp leading of the legal representatives of the deceased or for setting aside the abatement. It is true that it is no duty of the appellant to make regular enquiries from time to time about the health -or- existence of the respondent, but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself, justify his application for setting aside the abatement. That is not the law....."

And

" The limitation for an application to set aside abatement of a suit does not start on the death of the deceased respondent. Article 171 (present Art. 121), first schedule to the limitation act provides that. It does not provide the limitation to start from the date of the appellant's knowledge thereof...."

4. In the context of the question of sufficiency of cause envisaged under S. 5 of the limitation Act, the Supreme Court in the case of The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, has observed:

" xxxx It is no doubt true that whether it is a Government or a private party, the provisions of law applicable are the same, unless the statute itself makes any distinction. But it cannot also be gainsaid that the same consideration that will be shown by courts to a private party when he claims the protection of S. 5 of the Limitation Act should also be available to the State."

and

"From the above observations it is clear that the words "sufficient cause" should

receive a liberal construction as to advance substantial justice when no negligence or inaction, or-want of bona fide is imputable to a party." (emphasis by Court)

5. Though the latter two enunciations were rendered in the context of a matter arising under S. 5 of the Limitation Act, it seems to me that principles there under are applicable with equal, if not greater, force even to cases concerning abatement falling under R 9 of O. 22 C.P.C.

6. Keeping the above principles in view, I shall now proceed to examine the facts and circumstances in the cases on hand, in the light of the contentions urged.

7. The relevant allegations in the affidavits filed in support of the applications, which have been sworn to by the Land Acquisition Officer concerned, read:

"The appellant was not aware of the death of respondent and he came to know about the same only after the memo to that effect was filed by the respondent's counsel. After the said memo was filed the appellant made enquiries in that connection and has come to know very recently, that the respondent has died on 17-4-1974, leaving behind the heirs mentioned above. Since the appellant was not at all aware of the exact date of death, and the names of the L. Rs. he could not file the application to bring the L. Rs. on record within the prescribed period of limitation. If the said L. Rs. are not brought on record, the appellant would be put to great and irreparable loss."

8. In the objections filed on behalf of the legal representatives sought to be brought on record, it is to be noticed that there are no specific averments concerning want of negligence or bona fides on the part of the applicant in the I. As. concerned. It is no doubt true that in the affidavits in question there is no details concerning the nature of the enquiries made by the applicant to ascertain the date of death of the respondent and who his legal representatives were. But there are circumstances present in the case, which would indicate that the applicant could not have been guilty of any serious negligence or want of bona fides in taking the time he did in filing the applications in point.

9. The first circumstance to be noted is that the applicant came to know of the death of the respondent only after his counsel came to know of it when a memo was filed to that effect in the lower appellate Court. It is also significant that the said memo, designedly or otherwise, made no mention of the date of death of the respondent, as a result of which an enquiry had to be made even as regards such date. The deponent in the very nature of things could make enquiries in regard to this as well as the other matter of who the legal representatives were, only through his subordinate officials, which when one has regard for the manner in which the Governmental machinery functions, would necessarily involve some time. In this connection, it has to be noted that the applicant in the 1. As could only have come to know of the death of the respondent through his counsel some time after 6-6-1974, the date on which the said memo came to be filed.

10. Although these facts are not specifically vouched for in the affidavits filed, I do not see anything improbable in things having happened in the manner indicated. It also seems to me that all that an applicant for setting aside abatement has to show is that he was prevented by sufficient cause from filing an application to bring the legal representatives on record within the time allowed by Art. 120 of the Limitation Act, namely within 90 days of the death of the party concerned, that is, on the facts of the present case, within 17-7-1974. In this view, the applicant had hardly about 40 days within which to make all the necessary enquiries after being informed of the death of the respondent by the memo-dated 6-6-1974. As it happened, he has filed the application almost within three months of the receipt of the said information. The fact that the appeals had undergone a few more adjournments, subsequent to 6-6-1974, specifically for steps to bring the legal representatives on record, is to my mind, not a circumstance to be held up seriously against the applicant, especially when the matters were pending in appeal and a party like the one concerned herewith could not normally be expected to be present on all those occasions. In observing thus, I am not saying that a party could afford to stay put and not inform himself about the progress of the appeals. For all these reasons, the conclusions reached by the Court below cannot be upheld.

11. In view of the foregoing, these appeals are accepted and accordingly allowed. The orders impugned herein are set aside. I. As. II and III are allowed.

12. Since the appellant had been remiss in filing an affidavit with vague and insufficient particulars, which has been the principal cause of this litigation, I direct parties to bear their own costs.

13. Appeals allowed.