

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD**

Civil Revision Application No.197 of 2004

**Applicants:** Qazi Asad Abid and others through Mr. Imdad Ali R. Unar, Advocate.

**Respondents:** Haji Ali Nawaz and others through M/s. Jawaid Leghari and Mansoor Leghari, Advocates.

**Date of hearing:** 03.02.2025

**Date of decision:** 11.04.2025

**JUDGMENT**

**MUHAMMAD HASAN (AKBER), J.-**The captioned Civil Revision Application of 2004 emanates from the Judgment and Decree dated 31.05.2004 passed by the learned 1<sup>st</sup> Additional District Judge Badin in Civil Appeal No.52 of 2003 (impugned Judgment), whereby while upholding the original Judgment and Decree dated 19.01.2002 passed by the learned Senior Civil Judge Matli in F.C.Suit No.10 of 1998, the Appellate Court reduced the damages from Rs.200,000/- to Rs.150,000/-.

2. Brief background of the controversy is that in the year 1997, Haji Allah Dino stood candidate for a seat in Provincial Assembly from the constituency P.S-46 of Taluka Matli. The elections were to be held on 3<sup>rd</sup> February 1997 but only a day earlier, a news item was published in Daily Sindhoo Hyderabad, newspaper of the Defendants, claiming that the Plaintiff had withdrawn from his candidature in favour of his opponent. Haji Allah Dino filed F.C. Suit No.10 of 1998 against the Defendants claiming Rs.50,00,000/- (Rupees five million) as damages caused to him due to the said false publication which, in addition to misleading his voters, caused irreparable loss to his name and reputation.

3. Written statement was filed by the Applicants/ Defendants on 02-07-1998, where after on 31-10-1998, Haji Allah Dino expired. Application under Order XXII Rule 1 CPC. Filed by the present Respondents was allowed by the Court vide order dated 31.03.2000, despite objections by the Applicant, and the present Respondents being legal heirs of the Plaintiff were transposed as Plaintiffs in the



sult. Such order was not assailed by the applicants in appeal or revision. Thereafter, evidence was led by the Respondents, followed by Applicants' evidence, resulting into Judgment and Decree dated 19.01.2002 by the learned trial Court against the Applicants for a sum of Rs.200,000/- as damages. Assailed in Civil Appeal No.52 of 2003 by the Applicants before the learned 1<sup>st</sup> Additional District Judge Badin, the said Decree was modified by the learned appellate court vide impugned Decree dated 31.5.2004, to the extent that the quantum of damages were reduced from Rs.200,000/- to Rs.150,000/-, which has been assailed in the instant Revision application.

4. The preliminary argument raised by the learned counsel for the Appellant was that the prayers sought in the suit were for damages due to the alleged publication, but upon demise of Haji Allah Dino (the original Plaintiff), the right to sue did not survive to his legal heirs and the suit ought to have abated. However, while passing their respective decrees, both the learned Courts failed to properly consider this basic issue, which goes to the very root of the maintainability of the proceedings. Reliance was placed upon 2024 PLC (CS) 252 and PLD 2008 SC 155.

5. Conversely, learned counsel for Respondents 1 & 2 submitted that the death of the original plaintiff was a subsequent event; that such issue of abatement was already decided by the trial Court vide Order dated 31.03.2000 in application under Order XXII CPC. which was neither challenged in appeal nor in Revision by the Applicants, and therefore the same has attained finality; that Issue No.4 as also framed by the learned trial Court whereon evidence was also recorded and which covers the aspect of survival of the right to sue in favour of the legal heirs of the original Plaintiff; that the evidence produced by the heirs of the Plaintiff fully established the claim; and that not only the original Plaintiff but his family also suffered due to the acts of the Defendants. It is a matter of record that against the claim of Rs.50,00,000/-, only Rs.150,000/- have been decreed, and such decree by the appellate Court has not been challenged by the Respondents. Reliance was placed upon 1993 SCMR 2096.

6. Heard learned counsels and perused the record with their able assistance. Since the question of survival of the right to sue or otherwise after the demise of original plaintiff, touches the root of this case, hence initially, the same is being taken up. The moot question would be, whether in the facts and circumstances of the present case, the principle of abatement is attracted? The reliefs which were specifically sought in the plaint were:



"A) that the defendants 1, 2 and 3 may be ordered to pay the amount of Rs.50,00,000/- (Rupees fifty lacs) to the plaintiff as damages, caused to the plaintiff by publishing and printing the false news against the plaintiff, as they injured the reputation, degraded and lowered down his status and image in the esteem of general public.

B) that the compensatory costs may be awarded to the plaintiff;

C) that any further relief, deemed fit and proper, may be granted."

7. Both the learned counsels pointed out that Issue No.4 was framed by the learned trial Court, which specifically deals with this question, in the following words:

"4. Whether the successors of original plaintiff are entitled for relief prayed by original plaintiff?"

8. The learned trial Court, in its Judgment, dealt this issue in the following manner:

"ISSUE No.4.

The burden of this issue lies upon plaintiff to prove. The learned advocate for plaintiffs argued that this is matter of financial gain and the legal heirs of the late plaintiff have got the right to sue even after the death of their father. He pointed out towards section 306 of the Succession Act 1925. The text of Section 306 is re-produced herein-below for sake of convenience:

"306. Demands and rights of action of an against deceased survive to and against executor or administrator. All demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his decease, survive to and against his executors or administrator except causes of action for defamation, assault, on defined in the Pakistan Penal Code or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory."

From above perusal it is clear that right to sue will continue except where the causes of action for defamation, assault, as defined in PPC or other personal injuries not causing the death of party. From the language of the Section 306 it is clear the right to sue survives even for the purposes of admission except in case of defamation and assault which is a criminal offence. The word personal injury has been used in same sentence along with the sentence of defamation, assault, within the meaning of PPC and this also clearly means that word personal injuries used in the text speaks about the physical injuries but here in this suit it is clear from the plaint, written



statement that the case is not of physical injuries, therefore, I am of the considered view that in such matter of damages as this one is, the right to sue, by the legal heirs survives. It has been held in judgment reported in AIR 1998 SC 506 as:

"The decision pointed out that the position would have been different if the plaintiff had a subsisting decree in his favour because then the cause of action would get merged in the decree and the decree would form part of the estate of the deceased which his legal representatives are entitled to uphold."

In this case the matter is of financial gain. It is that clear if during the life time of plaintiff the suit had been decreed in his favour and plaintiff got the money in pursuance of the decree of the court then ultimately that money would have been formed the part of the estate left by deceased which was opened to the legal heirs to inherit like other immovable and the moveable property as provided u/s 372 of the Succession Act and Muhammadan Law.

In view of above discussion and reasons I am clear in my mind that right to sue of the legal heirs of the plaintiff survives and his successors are also entitled to the relief as the plaintiff would get if he had been alive. This issue is replied in affirmative."

[underlining has been added for emphasis]

9. The learned Appellate Court, while upholding the above reasoning, observed on Issue No.4 in the following terms:

"7. Taking the issue No.4 it may be stated that the appellants filed an application U/O 12 Rule 1 CPC to dismiss the suit as Haji Allahdino Leghari expired during the pendency the suit and the suit stands abetted. The application was heard by learned Senior Civil Judge Matli and dismissed the same vide order dated 31.3.2000.

8. It is clear from the wording of order 22 rule 1 CPC that no abatement by party's death if right to sue survives. As is held in 1993 S.C.M.R page 2096 that no abatement by reason of death of either party after hearing of case---Court in such event could proceed with the suit and announce Judgment or order, notwithstanding death of plaintiff would have the same force and effect as pronounced before death of such plaintiff. This question has in fact been decided by learned trial Court and it was not challenged.

9. The suit was filed by Haji Allahdino Leghari on 24.1.1998, and as per evidence of P.W. Gul Mohammad, he died on 31.10.1998. The averments of the plaint show that late Haji Allahdino Leghari claimed the damages for loss of reputation, mental torture, treatment and loss of money. The plaint, evidence and the material placed before this Court suggest that after having gone through the news item that Allahdino Leghari has withdrawn from the candidatures, he lost the sympathies of his supports, they remained under wrong impression, hence he was defeated. He went in shock, spent Rs.1,50,000/- on treatment and ultimately, he died. This loss in fact amounts to compensation. The word "Compensation" would embrace in its purview any actual loss,



suffered by a party. It may be seen that entire evidence goes un-rebutted in general and this plea goes un-controverted in particular. This is clearly a claim for compensation which action will survive even after the death of plaintiff during pendency of suit.

11. Summing up the above discussion, I am of this view that the issue No.4 has been rightly answered by learned Lower Court, therefore, it does not call for any interference by the appellate Court."

[underlining has been added for emphasis]

10. Attending to the Respondents' primary objection, it will have to be seen, whether the argument pertaining to abatement of suit under Order XXII CPC can still be raised by the applicants at this revisional stage, when such question was already decided vide Order dated 31.03.2000, and which was not assailed by the Applicants in appeal or Revision? To my understanding, it can be raised at this stage, because when a decision is challenged before an appellate, the whole case, including all the interlocutory orders passed in the case gets re-opened, and the same can be challenged before the Court of appeal. Guidance in this regard can be taken from the case of '*Mst. Khurshid Begum and Others V. Ahmad Bakhsh and Others*'<sup>1</sup>. Suffice it to say that Issue No.4 already deals with this Issue, which is part of the Judgment which is under challenge in this Revision, hence the above objection does not hold field.

11. The second legal aspect for consideration would be the scope of revisional jurisdiction under section 115 CPC., which is limited to the extent of jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case, or if the conclusion drawn therein is perverse or conflicting to the law and the High Court has limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising powers thereunder. However, the said provisions also confer an exceptional and necessary power intended to secure effective exercise of its superintendence and visitorial powers of correction, unhindered by technicalities. Such is the ratio laid down by the Supreme Court in the case of '*Ikhtlaq Ahmed*'<sup>2</sup>. Hence, while exercising revisional jurisdiction, the Court could interfere when the concurrent findings of facts recorded, are based on erroneous assumptions of fact or patent errors of law or reveal arbitrary exercise of power or abuse of jurisdiction or where the view taken is demonstrably unreasonable. "*Asmatullah v. Amanat Ullah through Legal Representatives*"<sup>3</sup>, "*Abdul Sattar v. Mst. Anar Bibi and others*"<sup>4</sup> and "*Mst. Naziran Begum through Legal Heirs v. Mst. Khurshid Begum through Legal Heirs*"<sup>5</sup> are the cases which can be referred to support this.



9. Once the above legal hurdles have been cleared, I would now turn to the main issue in this case i.e. the scope and applicability of Order XXII rules 1 and 3 CPC., to the facts of the present case. The provision provides that the death of a plaintiff or a defendant, shall not cause the suit to abate and the legal heirs of such party succeed him in the suit, if the "right to sue survives. The question as to what makes a right to sue survivable, depends entirely upon the nature of the suit, which falls within the realm of substantive law. If the suit having regard to its frame and character, could proceed in the absence of the deceased party, there is no logic why the cause should not ordinarily proceed in favour of the surviving plaintiff (or against the surviving defendant), as the case may be. It has been consistently held by the Courts of this country that, civil actions for torts to the person of a plaintiff do not survive his death and die with him, i.e., the suit abates (not the same on the death of a tortfeasor, if his estate benefitted from the tort). This has been so held on the principle embodied in the maxim *actio personalis moritur cum persona* i.e., personal rights of action die with a person. Such principle is recognized and enforced in Pakistan on the grounds of justice, equity and good conscience, except where it is otherwise provided by statute. On the applicability of the aforesaid common law maxim, Halsbury's Laws of England records the same at paragraph 985, III-Edition, Volume 16 at page 483 that, "the representative could not sue or be sued for a wrong committed against or by the deceased for which unliquidated damages alone would be recoverable."

10. There is a simple test to check as to when and how a right to sue survives despite the death of a party. There are cases where the plaintiffs mostly sue with regard to some claim which is associated with or vests in their individuality. A suit for damages falls under that category. If a plaintiff dies during the pendency of suit for damages, the right to seek relief would not survive. In case of the survival of right to sue, the suits do not abate on death of a party but the impleadment or substitution of his legal heirs becomes incumbent. This is so because the surviving right has now become vested in the legal heirs. So long as a right can be referred to the individuality of a person, it does not survive at the death of that

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1. PLD 1985 SC 405
  2. 2014 SCMR 161
  3. PLD 2008 SC 155
  4. PLD 2007 SC 609
  5. 1999 SCMR 1171



person. The general rule is that all causes of action and all demands whatsoever existing in favour of or against a person at the time of his death, survive to or against his legal representatives. This principle is found enacted in the Succession Act as well, with the only exception that rights intimately connected with the individuality of the deceased will not survive based on the above *maxim*. A right to sue, other than intimately connected with the individuality of the deceased, will always, survive to or against his legal representatives. Such principle was settled by the Supreme Court of Pakistan in the case of '*Ali Muhammad Mirza and others V. Mst. Sardaran and others*'<sup>6</sup>.

11. The test whether a right to sue survives is whether the surviving plaintiffs can alone sue or the surviving defendants could alone be sued in the absence of the deceased plaintiff or defendant, respectively. It was in this legal background that the Supreme Court in the case of '*Wali v. Manak Ali*'<sup>7</sup> laid down the following three criteria to determine as to when the abatement would occur in totality, and when in partiality:

- i. that the suit or appeal would be imperfectly constituted in the absence of the deceased party;
- ii. that a decision on the merit may result in inconsistent decrees; and
- iii. that an effective decree cannot be passed against the living party.

12. In addition to the above two Judgments, a brief survey of the reported decisions pronounced so far by the Courts in Pakistan takes us to the case of '*Government Of Punjab V. Kamina*'<sup>8</sup> where in a case of fatal accident, it was held that in a case of negligence, upon the death of the defendant, the suit abated against him and the right to sue against him got extinguished because the personal action dies with the person. The exception to such rule was applicable if it was shown that the estate of the deceased wrongdoer was benefited by the tortious act committed by him. In another case of damages for defamation it was held in '*A. Majid Sama V. Asbestos Cement Industries Ltd.*'<sup>9</sup> that such a suit for damages would abate. '*Zahid Hussain Awan V. United Bank Limited through President and another*'<sup>10</sup> was a case of malicious prosecution, which abated due to demise of the Plaintiff, before settlement of Issues. *alish*

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6. PLD 2004 SC 185  
7. PLD 1985 SC 651  
8. 1990 CLC 404  
9. 1996 MLD 803  
10. 2018 M L D 1369



13. There is however, an exception to the principle of *actio personalis moritur cum persona*, which is contained in Rule 6 of the Order XXII C.P.C. in the following terms:

"6. ....whether cause of action survives or not, there shall be no abatement by reason of death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place".

(underlining added for emphasis).

14. A quick survey of the case law on the above Exception, takes us to:

- i. '*Abdullah and another v. Mian Tajuzzal Husain and another*'<sup>11</sup>, wherein the date of conclusion of evidence was considered to be the date of conclusion of hearing, and the suit was not abated, because the plaintiff expired before conclusion of the arguments.
- ii. In '*Murad Begum V. Muhammad Rafiq*'<sup>12</sup> the proceeding was not abated upon death of the party, which had occurred between conclusion of hearing and pronouncement of judgment and in such situation, it was held that the judgment shall have the same force and effect, as if it had been pronounced before the death took place.
- iii. '*Rashid Rayon Mills Karachi V. Amin Yousuf Nizami*'<sup>13</sup> is the case wherein death of the plaintiff in a suit for damages, after passing of the decree in his favour, was held to be of no effect since such a decree creates a judgement debt, and enures for the benefit of the decree holders' estate, on the principle of maxim '*Transit in rem judicatam*'.
- iv. In the case of '*Allah Rakha and another v. Muhammad Yousaf and 37 others*'<sup>14</sup> where plaintiff expired after conclusion of evidence but before hearing of the arguments in the trial Court, rule 3 was held as not attracted.
- v. The same view was taken by the Peshawar High Court in the case of '*Sher Khan V. Gul Zar Khan*'<sup>15</sup>.
- vi. another Exception to the above rule was recorded in the case of '*Government of Punjab V. Kamina*'<sup>8</sup> *supra*, wherein while holding the suit to abate in facts, it was further observed that, if it was shown that the estate of the deceased wrongdoer was benefited by the tortious act committed by him, then the suit would not abate against him.
- vii. In '*Dilawar Ali Khan V. Zohra Javaid*'<sup>16</sup> where in the case of even a personal contract, it was held that the legal representatives of the deceased defendant were not liable to pay any claim which the plaintiff



might have against the deceased, where they did not inherit any property from the deceased.


- viii. In *'Muhammad Yousaf V. Ghayyur Hussain Shah'* <sup>17</sup> it was held that when the tortfeasor was alive at the time of passing of the decree, his death could not take away right of the decree-holder to proceed against his property, for the recovery of the decretal amount.
- ix. Lastly, in *'Mst. Kubra Begum and others V. Mst. Shad Begum and others'*<sup>18</sup>, it was held that a Judgment passed, notwithstanding the death of a party after hearing of the case, would have the same force and effect, as pronounced before the death of such plaintiff.
- x. In the Indian jurisdiction, even where two persons having independent causes of action and who could have brought separate suits, join together as plaintiffs in one suit by reason of the fact that their right to relief arose out of the same fact or series of facts, it was held that death of one of them after hearing will not cause an abatement, so far as the other plaintiff or plaintiffs are concerned.<sup>19</sup>

15. Applying the foregoing principles to the facts of the case in hand, it appears that where wronged person brought a suit in his lifetime for damages allegedly for a false publication, but he died before passing of decree in his favour or even before recording of his evidence, his suit would clearly abate and his legal representatives could not continue such suit after his death. Where however, such cause had matured in a decree during his lifetime (even if he had expired after recording of evidence and before passing of decree), "*actio personalis cum*" would no longer apply, since such matter had passed into judgment and merged in the estate of the deceased. For applying the exception under Rule 6, the 'date of death of the Plaintiff' would therefore be the most material fact in defining whether the right to sue would survive or otherwise. As per the record of the present case, the Plaintiff Haji Allah Dino expired on 31.10.1998, BEFORE even recording his evidence, and which was the reason for impleading and recording of evidence by his legal heirs as Plaintiffs. Apparently, the exception provided under Rule 6 did not apply to the present case. Despite such position, both the learned Judges wrongly relied upon the case of 1993 SCMR 2096<sup>18</sup> reliance whereon was *stated*.

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- 11. PLD 1951 B 158
  - 12. 1974 PLD SC 322
  - 13. 1978 PLD 82
  - 14. 1980 CLC 517
  - 15. 2016 CLC 663
  - 16. 1997 CLC 152
  - 17. 1993 SCMR 1185
  - 18. 1993 SCMR 2096
  - 19. AIR 1963 SC 1901



completely misplaced, out of context and inapplicable, since in the facts of the said case, the Plaintiff had expired AFTER recording of his evidence. Both the learned trial and the appellate Judges also utterly misconstrued the provision of section 306 of the Succession Act 1925, and also completely erred by treating the subject matter as a case of 'financial gain'. Surprisingly, despite availability of abundance of case law in our own jurisdiction as discussed *ibid*, a small portion of an observation in a case under the Indian jurisdiction '*M. Veerappa v. Evelyn Sequeira and others*'<sup>20</sup> was made basis of the whole decision, and that too, in a completely incorrect manner, for a simple reading of the said decision itself shows that the same legal principles which are being followed in Pakistan were being followed there as well. Suffice it to say that even the ratio settled in the said Indian case was also misunderstood, claim wherein was with respect to alleged negligence by a lawyer in performing his professional duties under his contract of engagement, which is completely different from the facts of the present case. The learned Judges also failed to consider the case of '*Mercantile Co-Operative Bank Ltd. V. Messrs Habib & Co. and Others*'<sup>21</sup> where even in a suit for recovery of money by the Bank against its auditor on basis of his negligence for several years during discharge of his duty and enabling the Manager of the Bank to misappropriate assets of Bank, the suit was abated and it was held that representatives of the deceased could neither be sued nor sue for the wrong committed by the auditor. The learned Judges also wrongly assumed that the subject case was for compensation of medical treatment undergone by the Plaintiff, whereas the plaint and its prayer clause are completely silent on this aspect. Neither any specific claim for medical treatment was raised in the plaint, nor was any such relief sought in the prayer clause of the plaint, which is already reproduced in the preceding paragraph 6. If any such claim was subsequently raised by his legal heirs at the stage of their evidence after demise of the original Plaintiff, the same would not affect the legal position, as on the date of expiry of the deceased. The words used in the plaint clearly refer to an individual claim of the Plaintiff and nowhere figures about his family members or heirs. Not only did the learned Judges fail to apply the law in its true spirit but also failed to appreciate the plenty of case law in Pakistan on the subject.

16. if seen from the point of view of exercise of revisional jurisdiction as discussed at para 11 *ibid*, it appears that both the learned Judges failed to exercise their jurisdictions in accordance with law, by misconstruing and misinterpreting the relevant provisions of law and the Judgments referred 

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20. AIR 1998 SC 506

21. PLD 1967 SC 755



by them. Both the learned Judges also wrongly assumed claim of medical bills, which was not even referred or prayed in the plaint of the Suit, and therefore, failed to apply the correct judicial approach in light of the consistent dictum discussed above, hence this appears to be a fit case for exercise of revisional jurisdiction under section 115 CPC.

17. Upshot of the above discussion is that, upon demise of the Plaintiff Allah Dino, before recording of his evidence in his suit for damages based upon allegedly false publication, the cause of action did not survive, and therefore, the suit stands abated. Accordingly, the impugned Judgment and Decree dated 31.05.2004 passed by the learned 1<sup>st</sup> Additional District Judge Badin in Civil Appeal No.52 of 2003, and the Judgment and Decree dated 19.01.2002 passed by the learned Senior Civil Judge Matli are set-aside and the F.C.Suit No.10 of 1998 stands abated. Considering that the suit was instituted in the lifetime of Allah Dino, I make no order as to costs.

JUDGE