



2026:AHC:210069

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**MATTERS UNDER ARTICLE 227 No. - 11742 of 2026**

Zakir and 4 others

.....Petitioner(s)

Versus

Bundu and 5 others

.....Respondent(s)

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|---------------------------|---|---------------------|
| Counsel for Petitioner(s) | : | Ramesh Kumar Shukla |
| Counsel for Respondent(s) | : |                     |

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**AFR**

**Court No. - 35**

**HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.**

1. Heard Sri Ramesh Kumar Shukla, learned counsel for the petitioners.
2. The present petition under Article 227 of the Constitution of India has been filed assailing the order dated 26.04.2024 passed by the Judge, Small Causes Court, Bijnor in SCC Suit No. 41 of 2016, Bundu Vs. Mohd. Afaq, whereby the application Paper No. *Ka*-107, filed under Order XXII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") for bringing on record the legal representatives of the deceased plaintiff, was allowed. The petitioners have also challenged the subsequent judgment and order dated 28.07.2026 passed by the Additional District and Sessions Judge/Special Judge (E.C. Act), Bijnor in Civil Revision No. 58 of 2024, Zakir and others Vs. Bundu (since deceased) and others, whereby the revision preferred against the order dated 26.04.2024 was dismissed.

3. The facts, insofar as they are relevant for determination of the controversy arising in the present petition, are that Afaq, predecessor of the petitioners, was a tenant in the shop in question. The original plaintiff, Bundu, instituted SCC Suit No. 41 of 2016 for eviction and recovery of damages. During the pendency of the suit, Afaq died and his legal representatives were brought on record. Thereafter, the plaintiff Bundu died on 23.05.2023. An application dated 18.07.2023, described as an application under Order XXII Rule 3 read with Section 151 CPC, was filed by his legal representatives seeking their substitution in place of the deceased plaintiff. The application was opposed by the petitioners principally on the ground that Rule 25 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 required an application for substitution to be filed within one month from the date of death and that, having been filed beyond the said period, the application was barred by limitation and the suit had consequently abated.

4. The learned Judge, Small Causes Court, after considering the application and the objections thereto, allowed Paper No. *Ka*-107 by order dated 26.04.2024. The court noticed that the plaintiff had died on 23.05.2023 and that the application for substitution had been presented on 18.07.2023, and concluded that the application was within the period applicable to the proceedings. The court further considered that, in the interest of adjudicating the suit on merits, the legal representatives of the deceased plaintiff ought to be brought on record.

5. Aggrieved by the aforesaid order, the petitioners preferred Civil Revision No. 58 of 2024. The revisional court considered the rival submissions and, by judgment dated 28.07.2026, dismissed the revision. It noticed the contention of the petitioners that the application for substitution ought to have been filed within thirty days of the death of the plaintiff, as well as the response of the respondents that the application under Order XXII Rule 3 CPC was maintainable and had been filed within the period applicable to the proceedings. The revisional court ultimately found no illegality or material irregularity in the order of the trial court and affirmed the order permitting substitution.

6. It is in the aforesaid factual background that the present petition has been filed.

### **Question for Determination**

7. The question which arises for consideration in the present petition is whether the period of one month prescribed under Rule 25 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 governs an application for substitution of the legal representatives of a deceased plaintiff in an SCC suit instituted under the Provincial Small Cause Courts Act, 1887, and, consequently, whether the suit stood abated upon expiry of the said period.

### **Applicability of Rule 25 of the 1972 Rules**

8. The challenge laid by the petitioners rests essentially on the applicability of Rule 25 of the 1972 Rules to the proceedings in question. Learned counsel for the petitioners submits that the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is a special enactment and that the Rules framed thereunder prescribe the procedure applicable to proceedings governed by the said Act. It is contended that the general provisions of the CPC cannot be invoked so as to displace the special period prescribed under Rule 25 of the 1972 Rules. On this premise, it is submitted that both the courts below committed a jurisdictional error in entertaining the application under Order XXII Rule 3 read with Section 151 CPC and in treating it as having been filed within the prescribed period.

9. The aforesaid contention, however, necessarily requires examination of the threshold question as to whether Rule 25 of the 1972 Rules is attracted to the present proceedings at all. The applicability of the said Rule cannot be determined merely by reference to the nature of the dispute or the forum before which the suit is pending; it would depend upon the statutory source and character of the proceeding in which the application for substitution has been made.

10. The suit before the learned Judge, Small Causes Court is admittedly SCC Suit No. 41 of 2016. The application Paper No. Ka-107 was not made under Rule 25 of the 1972 Rules; it was expressly filed under Order XXII Rule 3 read with Section 151 CPC. The question, therefore, is not merely whether the dispute relates to a tenanted premises, but whether the suit itself was governed by the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 so as to attract the procedural provision contained in Rule 25 of the Rules framed thereunder.

11. The distinction between a proceeding governed by a special rent-control enactment and a suit instituted before a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 cannot be overlooked merely because the subject matter of the suit concerns a tenancy. The mere fact that the dispute is between a landlord and a tenant, or that the matter is pending before the Judge, Small Causes Court, does not, by itself, render the procedural provisions contained in the Rules framed under the 1972 Act applicable to the suit.

12. The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 operates within the field governed by that enactment, and the Rules framed thereunder regulate proceedings to which the Act applies. The applicability of Rule 25, therefore, necessarily depends upon the proceeding in question falling within the statutory field of the 1972 Act. Neither the identity of the court nor the nature of the relationship between the parties can, by itself, determine the applicability of the said Rule.

13. In the present case, no material has been brought on record to establish that the premises in question were governed by the 1972 Act so as to attract the procedural provision contained in Rule 25. On the contrary, the pleadings in the plaint indicate that the premises were claimed to be a newly constructed building. The material placed before the Court, therefore, does not support the applicability of the 1972 Act to the premises in question. The special period prescribed under Rule 25 of

the 1972 Rules, consequently, cannot be invoked for determining the period applicable to the application for substitution in the present SCC suit. The application, having been expressly filed under Order XXII Rule 3 read with Section 151 CPC, was required to be considered within the procedural framework otherwise governing the said proceeding.

14. The submission that the mere description of the court as the Judge, Small Causes Court is sufficient to attract Rule 25 of the 1972 Rules, therefore, cannot be accepted. The statutory source and character of the proceeding must first be identified. A procedural provision framed under a special enactment can govern a proceeding only where the proceeding itself falls within the statutory field of that enactment.

**Applicability of the Code of Civil Procedure to Proceedings before the Small Causes Court**

15. The conclusion that Order XXII CPC applies to the present proceeding is also supported by the statutory scheme governing procedure before a Court of Small Causes. Section 17 of the Provincial Small Cause Courts Act, 1887 specifically provides for the application of the Code of Civil Procedure to suits cognizable by a Court of Small Causes and to proceedings arising out of such suits. Sub-section (1) thereof provides that the procedure prescribed in the Code of Civil Procedure, 1908 shall, save insofar as it is otherwise provided by the Code or by the Provincial Small Cause Courts Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits. The statutory scheme, therefore, is not one of general exclusion of the CPC; rather, the provisions of the CPC apply subject to such exclusions or modifications as are expressly provided by the Code or the Provincial Small Cause Courts Act.

16. The exclusions contemplated by the statutory scheme are, *inter alia*, delineated by Section 7 CPC. Section 7 specifies the provisions of the Code which do not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 or to Courts exercising the jurisdiction of a Court of Small Causes. The exclusions include specified provisions and sections, including Sections 9, 91, 92, 94 and 95, and Sections 96 to

112 and 115. Significantly, Order XXII CPC is not included amongst the provisions so excluded.

17. The same position is apparent from Order L Rule 1 CPC, which specifically enumerates the Orders and Rules of the Code which shall not extend to Courts constituted under the Provincial Small Cause Courts Act. Amongst the provisions excluded are Order II Rule 1, Order X Rule 3, Order XV subject to the exceptions specified therein, specified provisions of Order XVIII, Orders XLI to XLV, specified provisions of Order XLVII and Order LI. Order XXII does not find place in the list of excluded provisions.

18. The legislative scheme is thus significant. Where the legislature intended particular provisions of the CPC not to apply to a Court of Small Causes, it has expressly so provided. No such exclusion has been made in respect of Order XXII. Consequently, the provisions of Order XXII cannot be treated as inapplicable merely because the proceeding is before a Court of Small Causes. By virtue of Section 17 of the Provincial Small Cause Courts Act, the procedure prescribed by the CPC continues to govern such proceedings unless its application is expressly excluded or modified by the Code itself or by the special Act.

19. The aforesaid statutory position finds support from the decision of this Court in **Raju Kashyap and 2 others v. Smt. Archana Jain**<sup>1</sup>, wherein, while examining the statutory scheme governing proceedings before a Court of Small Causes, this Court noticed that Section 17 of the Provincial Small Cause Courts Act makes the procedure prescribed by the CPC applicable to suits cognizable by a Court of Small Causes, subject to the exceptions and modifications expressly engrafted in the Code or the special Act. The Court further noticed that Order L Rule 1 CPC specifically enumerates the provisions of the Code which do not extend to Courts of Small Causes. The decision thus supports the principle that the applicability of the CPC to proceedings before a Small Causes Court is to be determined with reference to the statutory

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exclusions and that a provision of the Code cannot be treated as inapplicable merely by implication. In the absence of any statutory exclusion of Order XXII, the procedure prescribed therein for bringing the legal representatives of a deceased party on record consequently continues to apply to an SCC suit.

20. The position is also consistent with the decision of this Court in **Kishalaya Banerjee and others v. Smt. Kamala Devi Budhia Dharamshala Trust<sup>2</sup>**, wherein, while considering an SCC suit for ejectment and recovery of rent and damages, the Court examined the applicability of Order XXII CPC vis-à-vis Section 34(4) of U.P. Act No. 13 of 1972 read with Rule 25 of the Rules. The Court proceeded on the basis that, where the 1972 Act was not applicable to the premises, the question of substitution and abatement would be governed by Order XXII CPC and Article 120 of the Limitation Act, 1963. The decision thus reinforces the conclusion that the applicability of Rule 25 depends upon the proceeding falling within the statutory field of the 1972 Act and cannot be presumed merely from the fact that the dispute is between a landlord and tenant or that the proceeding is an SCC suit.

21. It follows that the mere fact that the proceeding before the Small Causes Court concerns a tenanted premises does not, by itself, bring the proceeding within the ambit of U.P. Act No. 13 of 1972. Where the proceeding is an SCC suit governed by the Provincial Small Cause Courts Act, the applicability of Order XXII CPC has to be determined within the statutory framework governing such suit. In the absence of any statutory provision displacing its application, Order XXII CPC governs the question of substitution of the legal representatives of a deceased party.

#### **Application of Order XXII Rule 3 CPC and Article 120 of the Limitation Act**

22. Order XXII CPC contains the general procedural mechanism governing the consequences of the death of a plaintiff or defendant during the pendency of a suit and the manner in which the legal

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representatives of the deceased are to be brought on record. Where a sole plaintiff dies and the right to sue survives, Order XXII Rule 3 CPC contemplates bringing the legal representatives of the deceased plaintiff on record so that the proceeding may continue.

23. In the present case, the original plaintiff, Bundu, died on 23.05.2023 during the pendency of the suit. His legal representatives thereafter filed the application for substitution on 18.07.2023. The application was thus made within the period prescribed under the CPC read with the Limitation Act.

24. Article 120 of the Limitation Act, 1963 prescribes a period of ninety days for an application for bringing the legal representatives of a deceased plaintiff or defendant on record. The period in the present case, reckoned from 23.05.2023 to 18.07.2023, was within the prescribed period of ninety days. The application was, therefore, within limitation under the procedural regime governing the present SCC suit.

25. The consequence contemplated by Order XXII Rule 3(2) CPC would arise only upon failure to make the requisite application within the period prescribed by law. Since the application in the present case was filed within the period prescribed under Article 120 of the Limitation Act, the consequence of abatement did not arise and no separate application for condonation of delay or setting aside abatement was required.

26. It is also material that the applicants before the trial court claimed to be the legal representatives of the deceased plaintiff and sought only to continue the pending litigation in his place. The application did not seek to introduce an independent cause of action or a stranger to the litigation. The question before the trial court was confined to the continuation of the pending suit through the legal representatives of the deceased plaintiff in accordance with Order XXII Rule 3 CPC.

#### **Whether the Suit Stood Abated**

27. The further submission of the petitioners is that, upon expiry of thirty days from the date of death of the plaintiff, the suit stood abated

and the court thereafter lacked jurisdiction to entertain the application for substitution. The contention, however, is premised entirely upon the applicability of Rule 25 of the 1972 Rules.

28. For the reasons already recorded, Rule 25 of the 1972 Rules has no application to the present proceedings. The suit is an SCC suit governed by the Provincial Small Cause Courts Act, 1887, and the application for substitution was governed by Order XXII Rule 3 CPC. Since Order XXII is not excluded from its application to proceedings before a Court of Small Causes, the period prescribed under Article 120 of the Limitation Act governs the application.

29. The original plaintiff died on 23.05.2023, whereas the application for bringing his legal representatives on record was filed on 18.07.2023. The application was thus filed within ninety days from the date of death. Consequently, the condition attracting the consequence of abatement under Order XXII Rule 3(2) CPC did not arise. The contention that the suit stood abated upon expiry of thirty days is founded upon the applicability of Rule 25 of the 1972 Rules; that foundational premise having failed, the consequential plea of abatement must also fail.

30. The learned Judge, Small Causes Court, therefore, committed no jurisdictional error in entertaining and allowing the application under Order XXII Rule 3 read with Section 151 CPC. The revisional court, upon consideration of the objection raised by the petitioners, also found no illegality or material irregularity warranting interference with the order of the trial court. The conclusions recorded by both the courts below are consistent with the statutory framework governing the present proceeding.

### **Conclusion**

31. For the foregoing reasons, the principal basis of the challenge, namely, that the application for substitution was barred by the one-month period prescribed under Rule 25 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, cannot be sustained. The applicability of the said Rule to the present SCC Suit has not been

established. On the contrary, the material on record indicates that the premises were claimed to be newly constructed and that the 1972 Act was not attracted. The application for substitution was, therefore, required to be considered under the procedural provisions applicable to the SCC Suit, including Order XXII CPC.

32. The application dated 18.07.2023, having been filed within 90 days of the death of the plaintiff on 23.05.2023, was within the period prescribed under Article 120 of the Limitation Act, 1963. The suit had, therefore, not abated and no separate application for condonation of delay or for setting aside abatement was required. The order of the learned Judge, Small Causes Court, allowing the application for substitution under Order XXII Rule 3 read with Section 151 CPC, consequently does not suffer from any jurisdictional error or patent illegality.

33. It is also necessary to bear in mind that the order under challenge does not finally adjudicate the substantive rights of the parties in the SCC Suit. It merely permits the legal heirs of the deceased plaintiff to continue the proceedings in his place. The substantive rights and rival claims of the parties remain open for adjudication by the court concerned in accordance with law.

34. In view of the foregoing discussion, this Court finds no ground warranting interference under Article 227 of the Constitution of India with the order dated 26.04.2024 passed by the learned Judge, Small Causes Court, Bijnor in SCC Suit No. 41 of 2016, Bundu Vs. Mohd. Afaq, or with the judgment and order dated 28.07.2026 passed by the learned Additional District and Sessions Judge/Special Judge (E.C. Act), Bijnor in Civil Revision No. 58 of 2024, Zakir and others Vs. Bundu (since deceased) and others.

35. The petition is, accordingly, dismissed.

36. It is, however, clarified that the controversy has been examined by this Court only to the extent necessary for determining the validity of the orders permitting substitution of the legal heirs of the deceased plaintiff. The learned court below shall proceed with the SCC Suit in accordance

with law and uninfluenced by any observation made herein touching upon the merits of the substantive dispute between the parties.

**(Dr. Yogendra Kumar Srivastava,J.)**

**October 7, 2026**

Arun K. Singh