**APPLICATION UNDER ORDER 22, RULE, 4, C. P. C.**

IN THE COURT OF....................

Suit No..................... of 19........................................

CD................................................................... Plaintiff

*versus*

C. F................................................................ Defendant

The applicant most respectfully submits as under: —

1. That the defendant died on.................... (date).

2. That the deceased defendant is survived by his son.................... aged .................... years presently residing at.................... and he is the only legal representative of the deceased defendant.

3. That the right to sue survives despite the death of the defendant.

**PRAYER**

It is therefore most respectfully prayed that the son of the deceased defendant may be ordered to be made a party to the suit in place of the deceased defendant.

It is accordingly prayed.

Plaintiff

Through Advocate

Place:....................

Dated:....................

**CASE LAW**

***Order 22 Rule 4***

**WHEN ABATEMENT OF APPEAL AS A WHOLE**

Where the appeal against a joint decree abates against the respondents due to failure to bring the legal representatives on record, then the appeal abates as a whole1.

**WHEN APPEAL ABATES AS A WHOLE FOR NOT BRINGING LEGAL REPRESENTATIVES OF KARTA ON RECORD.**

Where the decree was a money decree and a joint decree and the shares also

1. Bhanwari Lal v. Bhulibai, A. I. R. 1972 Raj. 203.

were undefined and indivisible, failure to bring the legal representatives of the Karta on record would abate the appeal as a whole2.

**INVOKING POWER OF COURT: CONDITIONS.**

It is not necessary for provoking power of exemption conferred by sub-rule (4) to move an application within 90 days. Even an application for the said purpose is not required and the Court can by looking into the record itself grant the exemption. The power conferred is on the court, and writing of the same is not a condition precedent for its exercise3.

**POSITION WHEN SOME LEGAL REPRESENTATIVES ALREADY ON RECORD.**

If there are several legal representatives, it is sufficient if at least one of them is impleaded under this Rule. A *bonafide* application within time made for substitution of some of the heirs only is sufficient to keep the suit alive, there is no reason why the same principle should not hold good in a case where some of the heirs are already on record4.

**ABATEMENT AGAINST SOME RESPONDENTS.**

This Rule does not provide for the abatement of appeal against corespondents of deceased respondent when the legal representatives are not impleaded. It abates against them in certain circumstances, when it cannot proceed and has to be dismissed. Such result depends on the nature of the relief5.

**EFFECT OF DEATH OF ONE JOINT TORT-FEASORS.**

Law is settled that non-substitution of one joint tort-feasor who upon death has left behind legal representatives would lead to the inevitable dismissal of the entire litigation as it would cease to be competent6.

**WHEN APPEAL DOES NOT ABATE.**

Where the heir of surety was contesting his liability to satisfy the decretal debt, the appellant claimed no relief against the proforma respondent judgment debtor, by the death of proforma respondent judgment-debtor, right to sue does not revive against him or his heirs and their presence is unnecessary and appeal can proceed in their absence7.

2. Ghanshyam Singh v. Ram Prasad Singh, A. I. R. 1984 Pat. 203.

3. Mohammad Mustqeem v. Aftab Ahmed, A. I. R. 1983 All. 368.

4. Sri Ram Prasad v. The State Bank of Bikaner, A. I. R. 1972 All. 456.

5. Sheo Lal v. Ram Pat, A. I. R. 1972 P&H 32: A. I. R. 1962 S. C. 89 relied.

6. Dhruba Bhoi v. Brundabati Bhojani, (1972) 28 C. L. T. 400.

7. Kanhaiyalal v. Rameshwar, A. I. R. 1983 S. C. 503.

**FAILURE TO BRING LEGAL REPRESENTATIVES OF DECEASED RESPONDENT—WHETHER ABATES A WRIT PETITION ? —(YES).**

Where in a petition for issuing a *certiorari* a deceased person was arrayed as one of the respondents, and his legal representatives were not brought on record, though an application had been made for impleading the legal representatives, the fact remains whatever be the person, no order had been made or the application and they were not brought on record as respondents to the petition the writ petition fails on the short ground that the persons who are necessary parties, had not been impleaded as respondents8.

**NO ABATEMENT ON DEATH OF PROFORMA RESPONDENT.**

Where a proforma respondent died pending appeal, who claimed no right in property in dispute, the appeal will not abate for not substituting his heirs9.

**DEATH OF ONE DEFENDANT — WHEN TRIAL CAN PROCEED AGAINST REMAINING DEFENDANTS EVEN ON NON-IMPLEADMENT OF LEGAL REPRESENTATIVES.**

Where in a suit for ejectment of several trespassers/defendants the interest of the defendants in the suit cannot be said to be joint and indivisible, one defendant dies and his legal representatives not brought on record, the suit can proceed against the remaining defendants. The suit stands abated against the deceased defendant only10.

**WHEN APPLICATION UNDER THIS RULE NOT REQUIRED.**

Where the suit was lying stayed and there was no necessity to file any application before revival of suit, there is no question of the condonation of delay in filing the application under this Rule".

**SUIT FOR RECOVERY OF MONEY.**

If it is a personal contract or individual contract & if sole defendant dies & nothing comes to the hands of inter-meddlers, such inter-meddlers are not liable to be substituted as right to sue does not survive in view of Order XXII Rule 4 C. P. C.12

**JUDGMENT OF TRIAL COURT REVERSED IN FIRST APPEAL.**

***Order 22***

Question whether suit or apeal had abated due to death of a party has to be decided by Court in which suit or appeal was pending at the time of death of party and abatement took place.13

8. Ninganna v. Narayana Gowda, A. I. R. 1983 Kant. 116.

9. Abdul Hasan v. Param Kirti Saran, A. I. R. 1983 All. 182.

10. Gulam Rasool v. Mariyam, A. I. R. 1980 Raj. 197: 1979 Raj. L. W. 404.

11. Grindlays Bank Ltd. v. C. R. E. Wood and Co. Pvt Ltd., A. I. R. 1984 Delhi 138: 1983 Rajdhani L. R. 745: (1983) 5 D. R. J. 362.

12. Deo Narain Tewari v. Ilnd Additional District Judge, 1996(3) C. C. C. 18 (All. ).

13. Barfi Devi v. State of U. P., 2001 (4) CCC 1 (H. P. ).