

## Gursharan Singh Vs M/s Varinder Kumar Surinder Mohan

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** July 20, 1999

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 22 Rule 3, Order 22 Rule 3(1), Order 22 Rule 3(2)

**Citation:** (2001) 4 RCR(Civil) 90

**Hon'ble Judges:** Amar Dutt, J

**Bench:** Single Bench

**Advocate:** Mr. G.S. Nagra, for the Appellant; Mr. G.I. Sharma, for the Respondent

**Final Decision:** Allowed

### Judgement

Amar Dutt, J.

This revision petition is directed against the order dated 23.4.1998 passed by the Civil Judge (Junior Division), Nakodar, by

which he had dismissed the applications dated 23.7.1997 and 27.10.1997 under Order XXII Rule 3, CPC.

2. The challenge to the impugned order is confined to the fact that the trial Court while passing the order has not taken into consideration the

Punjab Government Notification No. GSR 17/CA 5/8/01.22/Amd. 92 dated 4.2.1992, which reads as under :-

Rule 3(2): "Where within the time limited by law no application is made under Sub-rule (1), the suit shall not abate as against the deceased plaintiff

and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death

took place, and the contract between the deceased and the pleader in that event shall continue to subsist.

By order of Hon'ble the Chief Justice and Judges.

Surinder Sarup,

Registrar.

On the basis of this notification, It was submitted that the court below had erred in dismissing the application under Order XXII Rule 3 CPC as

barred by time, because in consequence of the amendment, the suit of the plaintiff would have to be adjudicated upon notwithstanding the death as

if the judgment had been pronounced before the death had taken place. It was open to the legal representatives of the plaintiff to have joined the

proceedings by moving appropriate application before the judgment was pronounced. Since the trial Court had not pronounced the judgment prior

to the date of filing of the application under Order XXII Rule 3 Code of Civil Procedure, it could not have dismissed the application as barred by

time. Consequently, the order passed by the Civil Judge (Junior Division), Nakodar, cannot be sustained and has to be set aside. As a result the

Civil Revision is allowed and the application filed by the petitioner is allowed and it is directed that Gursharan Singh, Amarjit Singh, Gurdeep Kaur,

Jaswinder Kaur and Kamaljit Kaur should be brought on record as legal representatives of the plaintiff.

3. Revision allowed.