

**IN THE HIGH COURT OF SINDH AT KARACHI**

**H.C.A. No.304 of 2024**

*[Abid Hussain Sheikha through LRs vs. Lubaynah Sheikha & others]*

**PRESENT:**

Mr. Justice Arshad Hussain Khan  
Mr. Justice Amjad Ali Sahito

Appellants Through Mr. Abadul Hassnain, Advocate.  
Respondentes 1 & 2 Through M/s. Ali T. Ebrahim & Naima Qamar,  
Advocate.  
Date of Hearing 14.04.2026.  
Date of Judgment: 29.04.2026

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**JUDGEMENT**

**ARSHAD HUSSAIN KHAN J.-** Through this High Court Appeal, the appellants have assailed the order dated **29.02.2024**, passed by the learned Single Judge in Suit No.672 of 2010, whereby suit filed for recovery of damages on account of malicious prosecution was disposed of on the ground that it had abated due to the death of the plaintiff.

2. Briefly, the facts leading to the instant appeal are that the original plaintiff namely, Abid Hussain Sheikha, was a partner in the family firm M/s. Essajee Ibrahimjee & Co., established in the year 1867. He, along with his brother Mansoor Ali Sheikha (defendant No.1) and step-brother Ameer Ali, resided at property bearing No. 17, Old Clifton, Karachi, a heritage property since 1975. Respondents No.2 and 3 are the sons of late Ameer Ali. Disputes arose among the parties after the demise of their [appellants'] father and Ameer Ali, particularly concerning property rights and sharing of utilities. On 28.10.2005, defendant No.1 lodged FIR No.410/2005 at P.S. Boat Basin, alleging that the plaintiff and his son had extended criminal intimidation and caused damage to the property. It is the case of the plaintiff that, despite his precarious medical condition following surgery, he and his sons were taken into custody under humiliating circumstances. They were produced before the Judicial Magistrate in handcuffs, which allegedly caused humiliation and damage to reputation. Subsequently, upon

conclusion of trial, both were acquitted. Consequently, the plaintiff instituted Suit No.672 of 2010 seeking damages amounting to Rs.200 million on account of mental agony, loss of reputation, and pecuniary loss. During the pendency of the suit, the plaintiff passed away and his legal heirs (present appellants) were brought on record. However, vide order dated **29.02.2024**, at the stage of final arguments, the learned Single Judge held that the suit had abated upon the death of the plaintiff and that the impleadment of legal heirs was of no consequence, relying upon the maxim *actio personalis moritur cum persona* and the case of *Zahid Hussain Awan v. UBL* (2018 MLD 1369).

3. Learned counsel for the appellants (legal heirs of the deceased plaintiff) contended that the impugned order dated **29.02.2024** is legally unsustainable and factually erroneous. He further submitted that the observation in the impugned order regarding purported consent on the part of the appellants/Plaintiffs' counsel for disposal of the suit is incorrect, as no such consent was ever given. It is argued that the learned Single Judge failed to appreciate that the legal heirs had already been impleaded in the suit with the consent of the respondents / defendants; therefore, once such impleadment was allowed, the question of abatement did not arise. Placing reliance upon Order XXII Rule 6 C.P.C., learned counsel submitted that the said provision contemplates non-abatement where death occurs after conclusion of hearing and before pronouncement of judgment, the present case had reached an advanced stage, being ripe for final arguments and decision. At such a stage, the right to adjudication on merits ought not to be defeated merely by the death of the plaintiff, particularly when the cause of action had already been prosecuted through trial and the actionable claim had survived to the legal heirs. It is further contended that the delay in conclusion of the proceedings was largely attributable to the conduct of the defendants, and permitting abatement at this stage would enable them to unjustly benefit from their own delay. Learned counsel also argued that the claim in question constitutes an actionable right which survives to the legal heirs, and the summary termination of the suit has caused serious prejudice to the appellants. Lastly, it is urged that, considering the importance of the issue relating to survival of claims at an advanced stage of litigation, the impugned order be set

aside and the matter be remanded for decision on merits, in the interest of justice.

4. Learned counsel for respondents No.2 and 3 has vehemently opposed the appeal contending that the High Court Appeal is legally misconceived and factually untenable. It is contended that a suit for malicious prosecution is founded upon personal injury to reputation and liberty, and, therefore, in terms of the doctrine *actio personalis moritur cum persona*, such a cause of action is strictly personal and does not survive to the legal heirs. It is contended that, upon the demise of the original plaintiff, the suit stood abated by operation of law, and the subsequent impleadment of legal heirs does not revive or confer any right to prosecute a claim that has already been extinguished. It is further argued that the acquittal of the deceased plaintiff and his son was not on merits, but was extended on compassionate considerations, owing to age and illness; thus, the foundational elements necessary to sustain a claim for malicious prosecution are conspicuously absent. Learned counsel submits that the impugned order is free from any legal infirmity. It is maintained that the matter, though fixed for final arguments, had not attained the stage of conclusion of hearing; therefore, the statutory protection against abatement is not attracted in the present case. Lastly, it is urged that entertaining the instant appeal would amount to reopening a concluded controversy and would inevitably result in multiplicity of proceedings. On this premise, dismissal of the appeal, along with costs, is prayed for. To support his contention he has relied upon the case of *Muhammad Sharif v. Mst. Haseena* [2013 CLD 585], *Mst. Ghulam Sakina and 6 others v. Karim Bakhsh and 7 others* [PLD 1970 Lahore 412], *Bashir Ahmed v. United Sugar Mills Limited and 2 others* [2019 CLC 526], *Syed Ali Ahmed Shah v. Syed Shoukat Hussain Shah and others* [2025 SCMR 361], *Mrs. Rubab through Attorney v. Aftab Ahmed and 7 others* [2015 MLD 756] and *Mir Shakeel ur Rehman and others v. Yahya Bakhtiar and others* [PLD 2010 Supreme Court 612].

5. We have heard learned counsel for the parties and perused the material available on the record with their assistance.

From the record, it transpires that the original plaintiff, upon culmination of the criminal proceedings initiated at the instance of the respondents, instituted the underlying suit seeking damages on account of alleged malicious prosecution. The said suit was duly contested by the respondents/defendants, who filed their written statements. On the basis of divergent pleadings, the learned trial court framed the requisite issues, whereafter the parties led their respective evidence. Upon conclusion of evidence, the matter, vide order dated 06.09.2021, was fixed for final arguments. Thereafter, the case was repeatedly listed for final arguments; however, for one reason or another, the same could not be addressed. In the interregnum, on 19.01.2023, the original plaintiff expired. Subsequently, an application (CMA No.1986 of 2023) was filed by the present appellants for bringing on record the legal heirs of the deceased plaintiff, which was allowed by consent on 26.04.2023. However, on 18.10.2023, the learned Single Judge raised a question with regard to the maintainability of the suit in view of the death of the plaintiff. After hearing the parties on this aspect, the learned Single Judge, vide order dated **29.02.2024**, held that the suit had abated on the death of the plaintiff and impleading of his legal heirs is of no consequence. The said order is presently impugned before this Court.

6. In the peculiar facts and circumstances of the case, the following question arises for determination before this Court:

Whether, in a suit for damages on account of malicious prosecution, the death of the plaintiff after the conclusion of evidence but prior to final arguments results in abatement under the maxim *actio personalis moritur cum persona*, or whether such case falls within the ambit of Order XXII Rule 6 C.P.C., on the premise that the “conclusion of hearing” is to be construed as having occurred upon closure of evidence.

Before advertent to the merits, it would be advantageous to reproduce the relevant provision of Order XXII Rule 6 C.P.C.

“No abatement by reason of death after hearing. Notwithstanding anything contained in the foregoing rules whether the cause of action survives or not, there shall be no abatement by reason of the 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.”

The Honourable Supreme Court of Pakistan, in *Allah Rakkah v. Muhammad Yousuf* [PLD 1991 SC 601], has authoritatively held:

"The hearing of arguments is not enjoined on the Court by the Civil Procedure Code, 1908, and all that can be said on the language used in Rule 2 of Order XVIII C.P.C. is that if the parties or their counsel want to address arguments, the trial Court has to give them an opportunity to do so, but the hearing of the arguments is not essential before disposing of the case" "if the arguments are not heard before the judgment is passed the hearing will, for the purpose of Order XXII, Rule 6 of the Civil Procedure Code, 1908, be deemed to have concluded with the conclusion of the evidence of the parties, but if the arguments are heard, the stage at which the hearing concludes is the one when arguments conclude"

Similarly, the Lahore High Court in *Muhammad Yar v. Bakhan* (PLD 1992 Lahore 392) clarified that a suit does not abate if death occurs after the conclusion of evidence but before arguments. It was observed that where no arguments have been addressed, the hearing is deemed to have concluded upon the closure of evidence. This view has also been consistently followed by this Court, inter alia, in *Syed Arif Raza and others v. Syed Sabir Raza and others* (2006 MLD 1558). Furthermore, in *Zahid Hussain Awan v. United Bank Limited* (2018 MLD 1369), this Court reiterated that Order XXII Rule 6 C.P.C. constitutes a clear exception to the maxim *actio personalis moritur cum persona*, by providing that no abatement shall occur where death intervenes after the conclusion of hearing and before the pronouncement of judgment, regardless of whether the cause of action survives.

7. It is an admitted position that the evidence of the parties had already been concluded and the matter stood fixed for final arguments. In light of the dictum laid down by the Supreme Court in the case of *Allah Rakkah (supra)*, where arguments are not addressed, the "hearing" for the purposes of Order XXII Rule 6 C.P.C. is deemed to have concluded upon the closure of evidence. The same principle has been consistently affirmed by the Lahore High Court and by this Court in the precedents cited above. Therefore, the stage of "conclusion of hearing" in the present case had already been reached when the evidence of the parties was closed, notwithstanding that final arguments had not yet been advanced. Consequently, the death of the

plaintiff thereafter falls within the protective ambit of Order XXII Rule 6 C.P.C., which expressly provides that no abatement shall occur in such circumstances, irrespective of whether the cause of action survives. Accordingly, the maxim *actio personalis moritur cum persona* is not attracted to the present case, being subject to the statutory exception embodied in Order XXII Rule 6 C.P.C. The suit, therefore, did not abate upon the death of the plaintiff, and the impugned order holding otherwise is not sustainable in law. The question is answered accordingly.

Consequently, the impugned order is set aside and the suit is restored to its original position. Since the matter had already reached the stage of final arguments, the learned trial Court is directed to proceed with the case and decide the same on merits, strictly in accordance with law, after hearing learned counsel for the parties, preferably within a period of two (02) months from the date of receipt of a copy of this order.

JUDGE

JUDGE