

Judgment reserved on 7th July, 2026
Judgment delivered on 10th July, 2026

Misc. Appeal No. 91 of 2024 and Misc. Appeal No. 26 of 2025 -DRAT-Kolkata
IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

**HON’BLEMR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

Misc. Appeal No. 91 of 2024
(Arising out of I.A. 540 of 2023 in O.A. 260 of 2020 in DRT, Guwahati)

- 1. Smt. Smita Agarwal, wife of Late Navneet Agarwal, residing at Housing Colony Road, Rukmini Nagar, Dispur, Guwahati – 781 006, District – Kamrup (M), Assam.
 - 2. Nalin Agarwal, son of late Navneet Agarwal, residing at Housing Colony Road, Rukmini Nagar, Dispur, Guwahati – 781 006, District – Kamrup (M), Assam.
- ... Appellants

-Versus-

State Bank of India, having its central office at Madam Cama Road, Mumbai – 400 021 and branch office at GS Road, Dispur, Guwahati – 781 006.

... Respondent

Counsel for the Appellants	...	Mr. Ishan Saha (Virtual) Mr. R.D. Bagchi Mr. Snehasish Chakrabarty
Counsel for Respondent	...	Mr. Debasish Saha

With
Misc. Appeal No. 26 of 2025
(Arising out of I.A. 540 of 2023 in O.A. 260 of 2020 in DRT, Guwahati)

Smt. Namita Agarwal, Daughter of Late Navneet Agarwal, residing at Via Santa Maria dellkeGrazie, 43/B, P.I.N.- 52100, Arezzo, Italy.

...Appellant

-Versus-

State Bank of India, having its central office at Madam Cama Road, Mumbai – 400 021 and branch office at GS Road, Dispur, Guwahati – 781 006.

... Respondent

Counsel for the Appellants	...	Mr. Ishan Saha (Virtual) Mr. R.D. Bagchi Mr. Snehasish Chakrabarty
Counsel for Respondent	...	Mr. Debasish Saha

Misc. Appeal No. 91 of 2024 and Misc. Appeal No. 26 of 2025 -DRAT-Kolkata

JUDGMENT**: 10th July, 2026****THE APPELLATE TRIBUNAL:**

1. Since both the appeals have arisen against one order dated 9.9.2024 passed by Learned DRT, Guwahati in O.A. 260 of 2020 in I.A. 540 of 2023 (State Bank of India -vs- Necem Cement Limited & Others) hence both the appeals are being decided by a common judgment.

2. Appeal No. 91 of 2024 is filed by Smt. Smita Agarwal, wife of Late Navneet Agarwal and Nalin Agarwal, son of Late Navneet Agarwal while Appeal No. 26 of 2025 is filed by Smt. Namita Agarwal, daughter of Late Navneet Agarwal. O.A. 260 of 2020 was filed by State Bank of India against the Defendants, viz., Nacem Cement Limited, Navneet Agarwal, Managing Director of Nacem Cement Limited, Pradip Bhuyan, Director and Md. Abdul Zuber, Director for issuance of Recovery Certificate of Rs.68,05,711.82 with interest pendente lite and future at the rate of 14.50% per annum with monthly rests.

3. Pending O.A. proceedings, Navneet Agarwal, Defendant No. 2, died on 6.10.2022. Appellant, Namita Agarwal, in Misc. Appeal No. 26 of 2025, is the daughter of Navneet Agarwal while Appellant Smt. Smita Agarwal is the wife and Nalin Agarwal is the son of Navneet Agarwal in Misc. Appeal No. 91 of 2024.

4. Pending O.A. proceedings, I.A. 540 of 2023 is filed by the Bank on 21st August, 2023 for substitution of the legal

Misc. Appeal No. 91 of 2024 and Misc. Appeal No. 26 of 2025 -DRAT-Kolkata

representatives of Defendant No. 2, Navneet Agarwal under Order 22 Rules 4 and 9 C.P.C. read with Section 22 (2)(h) and 19 (25) of the Recovery of Debts And Bankruptcy Act, 1993 with a prayer for setting aside abatement and to substitute the legal representatives of Defendant No. 2, Navneet Agarwal, Defendant No. 3, Pradip Bhuyan. It is stated that on 17.2.2023 it was informed by the Learned Counsel for Defendants No. 2 and 3 to the DRT that Defendants No. 2 and 3 had expired but did not submit the Certificate of death and the particulars of the legal representatives of the deceased. Despite making hectic efforts, Bank could not get the Death Certificates and actual date of death could not be ascertained. However, after making hectic efforts, Bank came to know about the legal representatives of the deceased and the substitution application was filed.

5. Objections against substitution were filed by the proposed legal representatives of Defendant No. 2, viz., Navneet Agarwal, to the effect that Defendant No. 2, Navneet Agarwal, was arrayed as party in his official capacity of Managing Director of the Defendant Company hence the legal representatives cannot be substituted in his place. Application was moved beyond the period of limitation as provided under the law as the intimation of death was communicated on 17.2.2023 while the application is moved on 21.8.2023. The suit already stands abated and the abatement could not be set aside. Application is liable to be dismissed.

Misc. Appeal No. 91 of 2024 and Misc. Appeal No. 26 of 2025 -DRAT-Kolkata

6. Learned DRT in the impugned order records that the date of death of Defendants No. 2 and 3 was informed to the Tribunal on 17.2.2023 but the certificate of death and the details of the legal representatives were not provided by the Learned Counsel. Bank was not negligent or willfully delayed in moving the application for substitution. Accordingly, Learned DRT set aside the abatement, if any, and allowed the application for substitution of the legal representatives of Defendants No. 2 and 3.

8. Feeling aggrieved by the impugned order, legal representatives of Defendant No. 2, Navneet Agarwal, preferred two separate appeals however, no appeal is filed by the legal representatives of Defendant No. 3, viz., Pradip Bhuyan.

9. I have heard the Learned Counsel for Appellant as well as the Bank and perused the record.

10. Learned Counsel for Appellant would submit that undisputedly, intimation of death of Defendants No. 2 and 3 was given to the Bank before the Learned DRT on 17.2.2023 although the date of death of Naveet Agarwal is 6.10.2022. Learned Counsel submits that the substitution application should have been moved within ninety days, as prescribed in Order 22 Rule 4 C.P.C. Further it could not have been extended beyond 60 days more but the application was moved on 21.8.2023 which was beyond the period of limitation. The suit already stands abated against Defendant No. 2. The abatement could not be set aside by the DRT. The impugned order passed by Learned DRT suffers from

Misc. Appeal No. 91 of 2024 and Misc. Appeal No. 26 of 2025 -DRAT-Kolkata

material illegality. Learned Counsel has placed reliance upon Hon'ble Supreme Court judgment in ***Om Prakash Gupta alias Lallowa (Now deceased) -vs- Satisah Chandra (Now deceased) (2025 SCC OnLine SC 291)***.

11. Per contra, Learned Counsel for Bank would submit that although the intimation of the death was given to Learned DRT on 17.2.2023 but neither the certificate of death nor particulars of legal representatives were furnished by the Learned Counsel for Defendant No. 2. Despite repeated orders the same was not provided. Thereafter, Bank made its own efforts and found out the details of the legal representatives and moved the application on 21.8.2023. Abatement, if any, ought to have been set aside as the details of legal representatives were not provided to the Bank. Learned Counsel has placed reliance upon Order 22 Rule 10A C.P.C.

12. Undoubtedly, an application for substitution with a prayer for setting aside abatement was moved with delay which is allowed by the Learned DRT. The only question to be looked into is as to whether the order suffers from any illegality and any interference is called for or not?

13. Both the parties have placed reliance upon ***Om Prakash Gupta*** (supra) wherein Hon'ble Supreme Court has laid down the law on the subject. It was held that in considering an application for substitution along with setting aside the abatement, a justice-oriented approach should be adopted by the Court. Hon'ble Supreme Court has placed reliance upon a judgment in ***Mithailal Dalsangar***

Misc. Appeal No. 91 of 2024 and Misc. Appeal No. 26 of 2025 -DRAT-Kolkata

Singh -vs- Annabai Devram Kini [(2003) 10 SCC 691]

wherein it was held that:

"The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. x x x x"

Further, Hon'ble Supreme Court has placed reliance on Order 22 Rule 10A C.P.C. which reads as under:

"Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall there upon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist."

Reliance is also placed upon ***Gangadhar -vs- Rajkumar [(1984) 1 SCC 121]*** wherein it was held that:

"..... Rule 10-A which has been added in Order XXII of the Code of Civil Procedure by the Amending Act of 1976 provides that when a pleader appearing for a party to the suit comes to know of the death of the party, he shall inform the court about it and the court thereafter shall issue notice to the other party. In the case of an appeal, the word 'suit' has to be read as 'appeal'. This provision was introduced specifically to mitigate the hardship arising from the fact that the party to an appeal may not come to know about the death of the other party during the pendency of the appeal but when it is awaiting its turn for being heard. x x x x"

14. It was further held that once an application has been made by either party and the Court has been informed about the death of a party to the heirs/legal representatives he has left behind, only thing that remains for the Court is to pass an order substituting the heirs/legal representatives.

15. As regards setting aside of abatement or moving an application for substitution is concerned, placing reliance

Misc. Appeal No. 91 of 2024 and Misc. Appeal No. 26 of 2025 -DRAT-Kolkata

upon ***Chinnammal -vs- P. Arumugham [(1990) 1 SCC 513]*** wherein it was held that:

"The Code of Civil Procedure is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishments and penalties. The law procedure should be so construed as to render justice wherever reasonably possible."

16. In view of the law laid down by the Hon'ble Apex Court if we examine the impugned order, we find that when the factum of death was communicated to the Tribunal neither the death certificate nor the details of the legal representatives were provided either to the Appellants or the Tribunal. Thereafter, after making efforts, Bank found the details and moved the application for substitution which was allowed by the impugned order. Prayer made in the application was to set aside the abatement on the death of Defendant No. 2, Navneet Agarwal and Defendant No. 3, Pradip Bhuyan and for substituting their legal heirs/representatives in the Memo of Appeal.

17. It is also pertinent to observe that no appeal is preferred by the legal representatives of Defendant No. 3, Pradip Bhuyan. They accepted the order, as passed by the DRT. Prayer made in the application, coupled with the law laid down by the Hon'ble Apex Court, suffice the grounds for substitution and for condoning the delay and setting aside the abatement of the case due to the death of Defendant No. 2, Navneet Agarwal.

18. Having considered the submissions, we are of the considered view that no interference is called for in the

Misc. Appeal No. 91 of 2024 and Misc. Appeal No. 26 of 2025 -DRAT-Kolkata

impugned order. Learned DRT has passed an order in accordance with law. Both the appeals deserve to be dismissed.

O R D E R

Both the appeals, Misc. Appeal No. 91 of 2024 and Misc. Appeal No. 26 of 2025, are dismissed. Impugned order dated 9.9.2024 passed by Learned DRT, Guwahati in O.A. 260 of 2020 in I.A. 540 of 2023 (State Bank of India -vs- Necem Cement Limited & Others), is confirmed.

File be consigned to Record room.

Copy of the order be retained in the records of Misc. Appeal No. 26 of 2025.

Copy of the Judgment/Final Order be uploaded in the Tribunal's Website.

Order signed, dated and pronounced in open Court.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 10th July, 2026
ac