

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 37/2015 & CM 4849/2015

% Decided on: 23rd April, 2015

IQBAL SINGH Petitioner
Through Mr. PankajVivek with Ms. Anupriya
Singh, Advs.
versus

SANJAY GUPTA & ANR Respondents
Through None.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 26th November, 2014 whereby applications of Sanjay Gupta the plaintiff and respondent No.1 herein in Suit No.73/08/95 under Section 22 Rule 4 CPC and under Section 5 of the Limitation Act were allowed, the petitioner Iqbal Singh prefers the present petition.

2. A suit was filed by Sanjay Gupta against Kalawati and Iqbal Singh seeking specific performance, damages and injunction. Kalawati defendant No.1 expired on 18th July, 2008 however this fact was brought to the notice of the Trial Court and Sanjay Gupta on 14th November, 2011 when learned counsel for the Kalawati informed about the death of Kalawati. The names of legal heirs of Kalawati were informed on 18th September, 2012. Learned

counsel stated that Kalawati had left behind Ms. Guddi Saini as her only legal heir.

3. An application under Order 22 Rule 4 CPC was filed on 3rd October, 2012. An application under Section 5 of Limitation Act was subsequently filed on 26th August, 2013. Both these applications were decided by the impugned order. Learned Trial Court held that though the plaintiff/respondent No.1 failed to take sincere efforts for tracing out the particulars of L.Rs. of deceased Kalawati and was negligent, however, there was no lack of bonafide and thus the applications were allowed subject to costs of ₹10,000/- of which ₹5000/- was directed to be paid to L.R. of deceased Kalawati and ₹5000/- to the petitioner/defendant No.2.

4. Learned counsel for the petitioner contends that the order passed by the learned ADJ is grossly illegal. There is no duty cast on the learned counsel for the deceased defendant to inform about the L.Rs. and the plaintiff is required to make efforts. Delay can be condoned only if due diligence and not negligence is shown. Reliance is placed on Katari Suryanarayana & Ors. Vs. Koppiseti Subba Rao & Ors. 2009 (11) SCC 183 and Gurjala Bharathi & Anr. Vs. Vindhya Corporation & Ors. AIR 2007 AP 325.

5. I have heard learned counsel for the petitioner.

6. In the application under Order 22 Rule 4 CPC Sanjay Gupta stated that he came to know on 18th September, 2012 about the L.Rs. when he was informed by learned counsel for Kalawati that Smt. Kalawati who died on 18th July, 2008 is survived by only her daughter Ms. Guddi Saini and thus it was prayed that L.R. of deceased Kalawati be impleaded. In the application under Section 5 of the Limitation Act it was mentioned that for the first time

the fact that Kalawati died on 18th July, 2008 was conveyed to the Court on 14th January, 2011 whereafter the Court directed the counsel for Kalawati to supply the material particulars of the L.Rs. of Kalawati. Only when particulars were supplied on 18th September, 2012 the application under Order 22 Rule 4 CPC was filed.

7. No doubt in the applications, no material has been placed as to what efforts were made by Sanjay Gupta to find out the L.Rs. of Kalawati and reliance was entirely placed upon the learned counsel for Kalawati to inform the particulars.

8. Referring to Order 22 Rule 10A CPC inserted vide the amendment Act 1976 the Supreme Court in Katari Suryanarayana (supra) noted that the Rule provides for the duty of a pleader to communicate to the Court death of a party, however it does not take away the duty on the part of the plaintiff or the appellant as the case may be to file an application for condonation of delay in bringing on record the heirs and legal representatives of a deceased plaintiff/appellant or defendant/respondent within the period prescribed. The Supreme Court noted the principles applicable for the purpose of considering applications for setting aside abetment and summarized *inter alia* as:

“(i) The words ‘sufficient cause for not making the application within the period of limitation’ should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words ‘sufficient cause’ in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable

right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to a lawyer's lapses more leniently than applications relating to a litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

9. In Katari Suryanarayana (supra) the appellants were co-sharers and not third parties. Moreover, they were living in the same village and were neighbours and thus the factum of death would have been known to them. The plaintiff and the defendants in the present suit are strangers and on account of negotiations with regard to sale of the property they came in touch with each other. Thus, there was no way the plaintiff would have known that defendant No.1 Kalawati had died.

10. The learned Trial Court has already imposed costs for the delay in filing the applications and it cannot be said that the discretion exercised by the learned Trial Court was illegal or perverse warranting interference by this Court.

11. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 23, 2015
‘v mittal’