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

+ **FAO 46/2012**

UNION OF INDIA

..... Appellant

Through: Mr Ruchir Mishra, Mr Sanjiv Kr. Saxena
& Mr Mukesh Kr. Tiwari, Advs.

versus

NARENDER SINGH RATHEE & ANR

..... Respondents

Through: Mr Mohd. Rashid, Adv. for LR's of R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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16.12.2015

CM No. 8473/2015 (O. 22 R. 1 & 2 CPC by appellant)

1. This is an application moved to bring on record the LR's of respondent no.1. The record shows that respondent no.1 expired, on 30.12.2011. The information with regard to the same was brought to the notice of the counsel for the appellant at the hearing held on 11.05.2012. Since, the counsel for respondent no.1 Mohd. Rashid, was not aware of the details of the family members of the deceased respondent no.1, he stated that the same will be communicated to the counsel for the appellant, in writing, within a period of one week of that date.

1.1 Thereafter, on 27.02.2013, when the matter came up before the court, learned counsel for the appellant stated that since the counsel for deceased respondent no.1 had not provided the details of Legal Representatives (i.e. LR's), no steps could be taken in that behalf by him. The order further records that the names of the LR's of respondent no.1 were supplied in court

to the counsel for the appellant. The relevant part of the order dated 27.02.2013, which records this aspect, reads as follows:

“..... The names of the LR's of respondent no.1 have now been furnished by the learned counsel for the respondent. He, however, states that he is not aware of their addresses. Let steps be taken for substituted service of the remaining LR's, returnable before the Jt. Registrar on 9th may, 2013....”

(emphasis is mine)

2. Thereafter, despite the matter being fixed on 09.05.2013 and 11.07.2013, no steps were taken by the appellant.

2.1 However, on 13.09.2013, quite curiously, when the matter was fixed before the Registrar (Original), the counsel for the appellant stated that though it is recorded in the order of 11.07.2013 that names have been given to the counsel for the appellant, the said names were not supplied. It appears that reference to order dated 11.07.2013 was a mistake, the order which perhaps the learned Registrar (Original) wanted to refer to was order dated 27.02.2013.

3. Be that as it may, the position with regard to the appellant not moving an appropriate application for bringing the LR's of deceased respondent no.1 on record continued to obtain till 07.05.2015, when for the first time the captioned application was moved.

3.1 On that date, Mohd. Rashid, learned counsel for deceased respondent no.1, was present in court, and he was given time to file a reply to the captioned application.

3.2 On that very date the application filed on behalf of LR's of deceased respondent no.1 (which is the other application and listed before me for disposal i.e. CM No. 8444/2015), was also on record. This application has

been moved on behalf of the LR's of deceased respondent no.1 for dismissal of the appeal on the ground that it has abated. Notice in this application was also issued, which was accepted by the counsel for the appellant.

4. Mr Ruchir Mishra, learned counsel for the appellant, reiterates that since the details of LR's of deceased respondent no.1 were not supplied, an application for the said purpose, could not be moved at an earlier point in time.

4.1 It is his submission that only when an application was moved by the LR's of deceased respondent no.1, and a copy of the same was served on the appellant, the details of LR's of respondent no.1 were revealed and, consequently, the captioned application was moved. Mr Mishra further submits that contrary to the order dated 11.05.2012, the LR's of respondent no.1, in paragraph 2 of their reply to the captioned application, continue to state that the details, along with the names and addresses, were supplied.

4.2 Mr Mishra also submits that on his request a court notice was issued to Mohd. Rashid and, consequent thereto, on 09.02.2015, one Mr W.R. Khan appeared, who indicated that he was a partner of Mohd. Rashid, Advocate and had also represented the deceased respondent no.1 in proceedings filed under Section 34 of the Arbitration & Conciliation Act, 1996.

4.3 The record shows, on that date, Mr W.R. Khan appears to have submitted that on 27.02.2013, the names of LR's of deceased respondent no.1 were furnished to the counsel for the appellant, and that, he and his partner were no longer in touch with LR's of respondent no.1 nor, were they aware of their names and addresses. The Registrar on that date directed the appellant to take steps to ascertain the names and address of the LR's of

respondent no.1, once again.

5. I have heard the learned counsel for the appellant, as well as Mohd. Rashid. It is quite clear that, as per the record of this court, on 27.02.2013, the counsel for the appellant was supplied with the names of the LRs of deceased respondent no.1. The assertion of the learned counsel for the appellant that names were not supplied, is contrary to the record. If that position was correct, the appellant should have moved for rectification of the order dated 27.02.2013. However, as the addresses of the LRs of respondent no.1 were not supplied, the court on that date gave liberty to the appellant to effect substituted service.

6. Mr Mishra's submission that the position taken by the appellant was clarified in the subsequent proceedings, before the learned Registrar, cannot be accepted, as the order dated 27.02.2013 continued to obtain on the record in its original form. As a matter of fact, the Registrar seems to have not noticed the order of the court dated 27.02.2013.

7. The other submission of Mr Mishra, that in the reply filed by the LRs of deceased respondent no.1, they have incorrectly averred that they had supplied both the names, as well as the addresses, even prior to 11.05.2012, in my view, will not help the cause of the appellant for this reason. The suit abates automatically, on expiry of the limitation period. The period of limitation commences from the date of knowledge. In this case, as per the court record, knowledge will have to be attributed to the appellant, if not prior to 11.05.2012, as contended by the LRs of deceased respondent no.1, certainly on 27.02.2013. The position taken by the appellant that it had not been supplied the details of the address or that it did not have the details of the names or the addresses of the LRs of deceased respondent no.1, as

indicated above, will not halt the journey of time once limitation stands triggered.

8. In these circumstances, the application cannot be entertained. It is, accordingly, dismissed.

CM No. 8444/2015 [O. 22 R. 4(3) r/w S. 151 CPC]

9. In view of the order passed in CM No. 8473/2015, the captioned application has, in a sense, achieved its result. The appeal would stand abated. The application is, accordingly, allowed.

FAO 46/2012 & CM No. 1617/2012 (Stay)

10. In view of the order passed in CM Nos. 8473/2015 & 8444/2015 above, the captioned appeal and the accompanying application will have to be dismissed. It is ordered accordingly.

RAJIV SHAKDHER, J

DECEMBER 16, 2015

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