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

+ **CS(OS) 1226/1999**

RITU SHARMA

..... Plaintiff

Through: Mr. Atul Sharma and Yash
Srivastava, Advocates

versus

SANDEEP SHARMA

..... Defendant

Through: Ms. Sonali Malhotra and Amit
Sanduja for D-3

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

20.01.2016

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OA 316/2015

This chamber appeal has been preferred to assail the order dated 13.02.2015 passed by the learned Joint Registrar in I.A. No.8558/2013, whereby the application preferred by the plaintiff under Order 22 Rule 4 CPC to bring on record the legal representatives of the deceased defendant no.3 has been dismissed on the ground that the same was filed belatedly and consequently the suit was abated qua defendant no.3.

Defendant no.3 died on 16.11.2011. However, the information with regard to his death was furnished in court on 18.09.2013. I may observe that defendant no.3 is a stranger to the plaintiff. The information with regard to

the particulars of the LRs of deceased defendant no.3 along with the death certificate was furnished before the court on 06.12.2013. Therefore, before the said date, the plaintiff could possibly not have moved the application.

The limitation for preferring an application for substitution of LRs expired on 06.03.2014. On 24.03.2014, the learned Joint Registrar granted three weeks time for moving the application subject to payment of costs. This order was accepted by all the other parties and consequently there was no opposition to the grant of further time for moving the application subject to payment of costs. The application was, however, not moved within the extended period. The same was moved on 02.05.2014.

The delay in moving the said application from the date of the expiry of the extended period is about 18 days. The learned Joint Registrar has dismissed the aforesaid application under Order 22 Rule 4 CPC as there was no application moved by the plaintiff to seek condonation of delay under section 5 of the Limitation Act. The learned Joint Registrar has also taken the view that the application could not move under Order 22 Rule 9 CPC.

The suit filed by the plaintiff is to seek, inter alia, the relief of partition of the suit property. Defendant no.3 is a stranger to the plaintiff inasmuch, as, the defendant no.1, the brother of the plaintiff has sought to dispose of the suit property to defendant no.3.

It is well settled that mere mention of a wrong provision of law does not impinge on the maintainability of a proceeding. Therefore, even if the application was not nomenclatured as one under Order 22 Rule 9 CPC, it would make no difference. In ***Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others***, (2002) 3 SCC 195, the Supreme Court has observed as follows:

“12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

13. In view of the foregoing discussions, we are clearly of the opinion that on the facts of present case, Division Bench of the High Court was not justified in upholding order passed by the learned Single Judge whereby prayers for condonation of delay and setting aside abatement were refused and accordingly the delay in filing the petition for setting aside abatement is condoned, abatement is set aside and prayer for substitution is granted.”
(Emphasis Supplied)

*In this decision, the Supreme Court cited several earlier decisions, including the decision in **N. Balakrishnan Vs. M. Krishnamurthy**, (1998) 7 SCC 123. In that case, the application filed to seek setting aside of the ex-parte decree was delayed by 883 days. The Supreme Court in the said decision observed as follows:*

“8. The appellant’s conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

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The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The timelimit fixed for approaching the court in different situations

is not because on the expiry of such time a bad cause would transform into a good cause.

In N. Balakrishnan (supra), the Supreme Court further observed:

“11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari (1969) 1 SCR 1006 and State of W.B. v. Administrator, Howrah Municipality (1972) 1 SCC 366.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must

show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses.

*The Supreme Court in **Vedabai alias Vijayanatabai Baburao Patil v. Shantaram Baburao Patil & Ors.**, (2001) 9 SCC 106 observed that where the delay is of a few days, the court should adopt a liberal approach. The Courts while exercising discretion under section 5 of the Limitation Act should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of few days. Where the delay is inordinate, the consideration of prejudice to the opposite party will be a relevant factor calling for a more cautious approach, but in the latter case where the delay is of few days, no such consideration may arise, and such a case deserves a liberal approach. The Supreme Court observed that the exercise of discretion on the facts of each case, keeping mind that in construing the expression “sufficient cause”, the principle of advancing substantial justice is the prime importance”.*

In the present case, the main opposition has come to the application from the LRs of deceased defendant no.3. No prejudice has been suffered by the said LRs for the simple reason that they are in control of the suit property. It cannot be said that the delay is deliberate or intentional. The plaintiff has no advantage to gain by the said delay. Considering the fact that the delay is not large and is only 18 days, the same is condoned.

The appeal is allowed and consequently the application under Order 22 Rule 4 CPC preferred by the plaintiff is also allowed and the LRs of defendant no.3 are brought on record. The amended memo of parties be filed within a week.

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In view of the notification No.2718/DHC/Orgl. dated 25.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), at the request of the counsels for the parties, the present suit is transferred to the Court of the District Judge (North), Rohini Courts for further proceedings before the competent court on 10.05.2016.

It is made clear that as both sides are duly represented today, no fresh notice for appearance shall be issued and the parties shall ensure their presence before the concerned Court on the aforesaid date.

VIPIN SANGHI, J

JANUARY 20, 2016

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