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

+ CM(M) 611/2009

RAJESH KUMAR & ORS. .... Petitioners  
Through Mr.S.D.Dixit, Advocate

versus

OM PRAKASH & ORS. .... Respondents  
Through Mr.N.K.Jain, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

% **20.10.2016**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners have sought to impugn the order dated 12.05.2009 by which an application filed by the petitioners under Order 9 Rule 4 CPC and an application under Section 5 of the Limitation Act was dismissed.
2. The background facts of the case are that the petitioners have filed the present suit for dissolution of the firm, rendition of accounts and permanent injunction. On 31.07.1998, the trial court decreed the suit in favour of the petitioners and against the respondents. The respondents were restrained from carrying on the business of partnership and also from selling the property bearing No.W/107, PVC Market, Jwalapuri, Delhi. Partnership business was dissolved and an order for rendering of accounts was also passed. Respondents were directed to render upto date accounts of partnership business to the plaintiff and also to pay the same within one month. Preliminary decree was also to be drawn up.

3. The matter was kept pending for some reason or the other. On 23.02.2001 the suit was dismissed in default. On 09.03.2001 the petitioners moved an application under Order 9 Rule 9 CPC read with Section 151 CPC for restoration of the suit. The said application was also dismissed in default for non-prosecution on 03.07.2002. Thereafter, the plaintiff Sh.Parma Ram expired on 17.07.2004. On 10.10.2006, the LRs of the deceased plaintiff filed an application under Order 9 Rule 4 read with Section 151 CPC for setting aside the dismissal order dated 03.07.2002 and restoration of the application under Order 9 Rule 9 CPC. It is averred in the application that the respondents have failed to comply with the direction and it is pointed out that since 31.05.2001 Sh.Parma Ram due to his prolonged illness was not able to contact his counsel and ultimately died on 17.07.2004. Further, sons of late Sh.Parma Ram, namely, Sh.Shashi Kumar, Sh.Rajesh Kumar and Sh.Ravi Kumar were falsely implicated and arrested in a case under Section 302 IPC and remained in jail for several months but have been finally acquitted. It is pointed out that as per tradition of the community, the family of late Sh.Parma Ram destroyed all the medical records/belongings of late Sh.Parma Ram at the time of his cremation because as per belief of the community if the belongings/medical record of the dead person are not destroyed at the time of his death, the sickness may continue in the family. It is stated that it is in the end of September, 2006, the petitioners laid their hands upon the certified copy of the judgment dated 31.07.1998 and thereafter filed the present application.

4. The trial court dismissed the application of the petitioners holding that the petitioner had failed to show sufficient cause for condonation of delay in filing the present application. Law of limitation is based on the principle that

there must be end of litigation at same stage and the parties should not be made to drag the litigation indefinitely.

5. The learned counsel appearing for the petitioners has urged that the original plaintiff was seriously unwell and hence proper follow up was not done. He reiterates that there is a custom in the family of the petitioner of destroying the medical records at the time of cremation. It was put to the learned counsel for the petitioners as to how rendition of accounts is possible after almost 20 years of passing of the preliminary decree. He submits that the plot of land which was the subject matter of the preliminary decree i.e. plot bearing No.W/107, PVC Market, Jwalapuri, Delhi on which as per the preliminary decree, the respondents were restrained from carrying on the business of the partnership and also from selling the property is the important asset of which the petitioner should not be deprived. He submits that this plot has now been taken by DDA and the DDA is likely to allot alternate plots to the owner of such plots and the respondents are likely to apply for the same. He submits that in that eventuality if the suit is not restored, the petitioners will suffer grave irreparable loss. The petitioners would on restoration confine their relief only to the said plots as it may not possible to seek rendition of account at this belated stage.

6. Perusal of the facts shows that it cannot be disputed that the original plaintiff would have been a medical problem. The death certificate filed by the petitioners shows that it was issued by the PGIMS, Rohtak. This would show that the petitioner would have been suffering from some medical problem at the time his death. Even otherwise, there are no reasons to reject the submission of the petitioners that their father was ill and hence, there was no proper follow upon of the suit since its dismissal in default in 2001.

In fact, the original plaintiff had a preliminary decree in his favour whereby valuable rights in the property had been held in his favour. There would have to be some compulsion on the part of the plaintiff to not pursue the suit further. In my opinion, there are sufficient reasons to condone the delay in seeking restoration of the suit. Even otherwise, in my opinion valuable rights have accrued to the petitioners in view of the preliminary decree already passed and they should not be deprived of the fruits thereof. Keeping into account the submission of the learned counsel for the petitioners that they would not press rendition of accounts in view of the fact that the decree for rendition of accounts was passed long ago in 1998. It would be in the interest of justice that the suit be restored to its original number subject to payment of costs of Rs. 20,000/- to be paid to the respondents. Subject to the above directions, the present petition is allowed.

7. All pending applications, if any, stand disposed of.

8. The parties to appear before the trial court on 07.12.2016.

**JAYANT NATH, J.**

**OCTOBER 20, 2016/v**