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

\+ CM(M) 1255/2016 & CM No.45074/2016

PUNJAB NATIONAL BANK ..... Petitioner

Through Mr.Ram Bhushan Pandey and Mr.Govind Ballabh Pandey, Advs.

versus

MEENU & ORS ..... Respondents

Through None

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 06.12.2016

CM No.45074/2016

Exemption allowed, subject to all just exceptions.

CM(M) 1255/2016

1. An advance notice of the petition has been sent to the respondents. None is present for the respondents.

2. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 28.9.2016 by which an application under Order 22 Rule 9 CPC for impleadment of LRs of defendant No.2 was dismissed.

3. The petitioner is a Public Sector Undertaking and is stated to have

advanced education loan to the respondents. The defendant No.2 in the suit, namely, Shri Kamal Pal Singh has expired. Hence, the petitioner moved the present application under Order 22 Rule 9 CPC.

4. The trial court by the impugned order noted that the summons issued to defendant No.2 were received way back on 30.11.2015 whereby it was reported that defendant No.2 had expired. The order dated 10.3.2016 also noted that this fact of death of defendant No.2 has been brought to the notice of learned counsel appearing for the petitioner. Despite that, the petitioner filed the application for impleadment in May 2016 making a wrong averment that the petitioner came to learn about the death of deceased defendant No.2 in September 2016. Hence, the trial court dismissed the application of the petitioner.

5. Learned counsel appearing for the petitioner submits that the bank was genuinely not aware about the death of defendant No.2. He submits that when order dated 10.3.2016 was passed the petitioner did not hear the order properly and was not aware about the death of defendant No.2. He pleads that an opportunity be given in the interest of justice to move a proper application accompanied by an application for condonation of delay.

6. It may be noted that the petitioner has filed an application under Order 22 Rule 9 CPC. The said Section is applicable when a suit abates. The said Order 22 Rule 9 CPCP permits the plaintiff to apply for an order to set aside the abatement and if it is proved that he was prevented by a sufficient cause for continuing the suit, the court may set aside the abatement. The provisions of Section 5 of the Indian Limitation Act apply to such applications. The trial court should have, in the interest of justice, given one opportunity to the petitioner to move an appropriate application explaining

the sufficient cause of setting aside the abatement. Accordingly, in my opinion it would be interest of justice that this opportunity is granted to the petition to move an appropriate application as per law.

7. In the interest of justice, order dated 28.9.2016 is quashed, subject to payment of Rs.7,500/- to the respondents.

8. In the interest of justice, an opportunity is granted to the petitioner move an appropriate application for condonation of delay. In case such an application is filed within three weeks from today the trial court may consider the same alongwith the application under Order 22 Rule 9 CPC filed by the respondents.

9. Petition stands disposed of.

JAYANT NATH, J.

DECEMBER 06, 2016/n