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

Date of Decision: September 16, 2016

+ **FAO 11/2016 & C.M.No.171/2016**

PRADEEP KUMAR KAPOOR Appellant
Through: Ms. Tanya Sharma, Advocate

versus

BHARAT SINGH ANR ORS Respondents
Through: Mr. K.S. Singh and Ms. Tripta,
Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned order of 14th October, 2015 rejects appellant-plaintiff's application seeking setting aside of the abatement and another application to bring on record the legal heirs of respondent/defendant No.5. Paragraph No.9 of the impugned order gives the reason for declining appellant's aforesaid applications and this paragraph is reproduced below:-

“After appreciating the case laws relied by both the parties and applying the same to the facts of the present case, it is clear that the application seeking impleadment of

LRs of deceased party is to be moved within 90 days from the date of death of the party and not from knowledge of the death, however the fact that the applicant was having no knowledge of death may be considered for condonation of delay. In the present case, the counsel appearing for defendant apprised the court about the death of defendant no.5 on 19.07.2014 when the matter was listed in the court for the first time after the death of defendant and counsel for the plaintiff was present on that day in the court, as such, the application was required to be moved on behalf of plaintiff within the prescribed period. Even on the adjourned date 08.08.2014 the application was not moved by the plaintiff despite advice of the court. The conduct of the plaintiff in moving the applications is thorough negligent and his approach is very casual and he has not acted diligently, in such circumstances he is not having any ground to set aside the abatement occurred due to non-bringing the LRs of defendant no.5 in time.”

The challenge to the impugned order is on the ground that on 19th July, 2014, appellant had learnt about the death of respondent/defendant No.5 but due to certain personal problems of appellant-plaintiff, the application to bring on record the legal heirs of respondent/defendant No.5 could not be filed in time. However, it is submitted that the application to get the abatement set aside was filed within time and no reply was filed to the application seeking setting aside of the abatement

and so, trial court has erred in rejecting appellant's applications and thus, impugned order deserves to be set aside and abatement proceedings ought to be set aside and the legal heirs of respondent/defendant No.5 ought to be brought on record.

To controvert the aforesaid stand, learned counsel for respondents submits that trial court has rejected appellant's applications in view of the dictum of Supreme Court in *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs. and Others*, (2008) 8 SCC 321 as appellant had been grossly negligent in bringing on record the legal heirs of respondent/defendant No.5 and so, there is no substance in this appeal. Reliance is placed upon Supreme Court's decision in *Balwant Singh (Dead) v. Jagdish Singh and Others*, (2010) 8 SCC 685 in support of above submissions.

Upon hearing and on perusal of impugned order, the material on record and the decisions cited, I do find that the personal problems of appellant-plaintiff have not been elaborated, but this by itself would not justify rejection of applications filed by appellant-plaintiff because the averments made in the applications were not controverted by respondents by filing a reply thereto.

In *Perumon Bhagvathy (supra)*, the party was found to be grossly negligent whereas it is not so in the instant case. In *Balwant Singh (supra)*, there was lack of *bonafides* whereas it is not so in the case in hand. Application seeking setting aside of abatement was undoubtedly filed within time and therefore, trial court was not justified in rejecting

appellant's applications by observing that appellant was thoroughly negligent or that his approach was very casual. There is no basis to conclude that appellant had not acted diligently or he was thoroughly negligent or that his approach was very casual, as non-filing of application on adjourned date i.e. 8th August, 2014 would not have stalled abatement.

The aforesaid inferences are apparently without any basis. However, since the personal problems of appellant have not been elaborated, therefore, certain amount of negligence is indeed imputable to appellant for which he needs to be put to terms. Consequentially, trial court's order is accordingly set aside subject to payment of costs of ₹10,000/-. Consequently, upon payment of costs of ₹10,000/- by appellant to respondents within four weeks from today, appellant's application to set aside abatement shall stand allowed and appellant's application under Order 22 Rule 4 of CPC shall also stand allowed and the legal heirs of respondent/defendant No.5 shall be brought on record. Needless to say that in default of payment of costs, impugned order shall operate.

With the aforesaid directions, this appeal and the application are disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 16, 2016

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