

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**NOTICE OF MOTION NO. 148 OF 2012
IN
SUIT NO. 59 OF 2009**

Baldeo Ramnath Khanna	.. Petitioner (Deceased)
And	
Asha Khana & Ors.	.. Applicant
V/s.	
Kulbhushan Khanna	.. Respondent

Mr.Y.S. Singh for applicant/petitioner.

Mr. Dipesh U. Siroya for defendant.

**CORAM : K.R.SHRIRAM, J.
DATE : 18TH JANUARY, 2017**

P.C.

1 Heard the counsel for the applicant and the counsel for the respondent.

2 The delay if one takes from the date of death of the petitioner is approximately 650 days. It is settled law that under Article 120 of the Limitation Act, 1983, the point of limitation for filing an application to bring the legal representatives of the deceased on record is the date of death of the party and if no application is filed within the 90 days period of limitation, the suit abates. An application has to be filed to bring the legal representatives of the deceased on record within 60 days from the date of

abatement and if there is a delay in making such an application, the delay should be properly explained in the affidavit filed in support of the petition under Section 5 of the Limitation Act.

It is also settled law that in such type of cases, liberal view is required to be taken as the rules of procedure are enacted to further the cause of justice and not to create obstacles in their way or to impede it. The Code of Procedure is designed to facilitate justice and further its ends not a penal enactment for punishment and penalties; not a thing, designed to trip people up.

3 I have considered the affidavit in support and the main ground for delay is that they were not properly advised by the Advocate that the applicants should be brought on record failing which the petition filed by the deceased petitioner will abate and cannot be proceeded with. It is also stated that in a connected matter when they took advise from a senior advocate, they were advised that an application for bringing on record the legal representatives of the petitioner is required to be made. To a question posed by the Court, the counsel appearing for the respondent was honest and candid to state that it was he who had made a mistake of not advising the applicant.

4 The deceased petitioner and the respondent were brothers. The petition was filed by the deceased petitioner for a letter of administration with Will to the property that was belonging to their father Ramnath Narsingdas Khanna, who died on 15th February 2001. It is settled law that in a dispute between family members, Court should be mere considerate towards the parties. This Court in ***Vasant Jagannath Malkar Teli & Ors. vs. Parvati Ananda Phatak & Ors.***¹ has followed various judgments in the Apex Court to hold that a highly technical and pedantic approach in such matters should be eschewed as ultimately the endeavour should be to see that a party is able to prosecute the remedy available in law on merits and a lenient approach as regards abatement of a suit is required to be taken.

5 Having considered the facts and circumstances and particularly in view of the candid confession of Shri Singh, I am inclined to set aside the abatement and allow the notice of motion.

6 The notice of motion allowed in terms of prayer clause (c) and accordingly disposed.

1 2012 (6) MH.L.J.138

7 I am told that the petition was dismissed for non-removal of office objections. Since it is the dispute between the family members, I am inclined to restore the petition on the undertaking of the Advocate for the applicant that they will take all steps to remove office objections within four weeks from today and also serve an amended copy of the petition upon the respondent.

It is made clear that if the office objections are not removed, the petition will stand dismissed without further reference to the Court and no application for extension of time or for restoration will be entertained by the Court.

(K.R. SHRIRAM, J.) *