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

+ CM(M) 198/2017 and CM Nos. 6515-16/2017

BALWAN SINGH & ORS Petitioners
Through Mr. Mukesh M. Goel, Advocate.

versus

PHOOL SINGH Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
20.02.2017

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to challenge the order dated 11.11.2016 by which an application filed by the respondent/plaintiff under Order 22 Rule 4 CPC for bringing on record the LRs of the deceased defendant No.2, an application under Section 5 of the Limitation Act for condonation of delay in filing the said application and an application for condonation of delay in re-filing were allowed.

2. The respondent has filed a suit for specific performance against the petitioners. The said suit was filed before this court as per the then pecuniary jurisdiction of this court. Defendant No.2, i.e. petitioner No.2 expired on 21.12.2013. On 28.03.2014, the counsel for the said defendant No.2 appeared and made a submission that the said defendant No. 2 had expired. The respondent filed an application under Order 22 Rule 4 CPC to bring on

record the LRs of the deceased defendant No.2 on 27.09.2014 i.e. about five months after being informed about the death of defendant No. 2. The application was lying under objections with the Registry of this court. It has been re-filed after removing the objections after 83 days. Hence, another application has been filed by the respondent seeking condonation of delay in re-filing of the application.

3. The trial court by the impugned order noting the submissions made by the respondent in the application under Section 5 of the Limitation Act held that no cogent reasons have been mentioned in the aforesaid application for filing and for re-filing. However, keeping in view the facts, circumstances and submissions made and in the interest of justice, the trial court allowed the applications of the respondent subject to payment of costs of Rs. 5,000/- and allowed the respondent to implead the LRs of the deceased defendant No.2.

4. I have heard the learned counsel for the petitioners. He has vehemently argued that the trial court itself has come to a conclusion that no cogent reasons have been mentioned in the application under Section 5 of the Limitation Act and hence, the trial court was obliged to have dismissed the application. He submits that no charity is being performed by the court where the court itself comes to a conclusion that no grounds are mentioned in the application. The trial court ought to have dismissed the same. He submits that on account of the delay in impleading the LRs of defendant No.2, certain rights had accrued in favour of the petitioners which could not have been taken away in this casual manner. He relies upon the judgment of the Supreme Court in the case of **Balwant Singh vs. Jagdish Singh, AIR 2010 SC 3043** to submit that the phrase 'sufficient cause' used under

Section 5 of the Limitation Act even if it received a liberal construction would imply reasonable time and proper conduct of the concerned party.

5. A perusal of the applications filed by the respondent under Order 22 Rule 4 CPC and under Section 5 of the Limitation Act would show that the respondent has pointed out that the respondent is a chronic and acute patient of thyroid and diabetes along with other diseases and on account of his illness, he was unable to go to the house of defendant No.2 to ascertain as to who are the legal heirs of the deceased defendant No.2. The knowledge about the death of defendant No.2 was received on 28.03.2014 when information to that effect was given by the learned counsel appearing for defendant No.2. Even petitioner No.1 who was the real brother of the deceased defendant No.2 has not informed about the legal heirs of the said deceased defendant No.2. The respondent further stated that he is not in a position to walk for three minutes or stand for five minutes due to weakness of his body. It is claimed by the respondent that despite his critical illness, with the assistance of his son and his family member, he visited the village of defendant No.2 and physically verified the information of the death as well as the name and addresses of the legal heirs of defendant No.2. Based on the same, the application has been filed.

6. As noted above, there is a delay of about five months in filing of the application from the date of knowledge of the death of defendant No.2. No doubt defendant No.2 died on 21.12.2013. However, information was received by the respondent only when the counsel appearing for the deceased defendant No. 2 mentioned about his death on 28.03.2014 before the court.

7. The delay of five months from 28.03.2014 has been explained on

account of the illness of the respondent and the time taken to find out the names of the LRs of defendant No .2.

8. In my opinion, the respondent has shown sufficient cause for the delay in filing of the application for bringing on record the LRs of the deceased defendant No. 2.

9. Similarly, as far as the application for condonation of delay in re-filing is concerned, the counsel for the respondent has pointed out that the delay took place as the record of the case got mixed with some other file. Further, the clerk of the counsel for the respondent left the job on 05.11.2014. Hence, the record remained misplaced.

10. The Division Bench of this court in the case of ***S.R.Kulkarni vs. Birla VXL Ltd., 1998 RLR 519*** has observed that the delay in re-filing of a petition has to be treated in a different manner as compared to delay in the original filing of the application .

11. In the light of the above, in my opinion, the respondent has shown sufficient cause for condonation of delay in re-filing of the application.

12. Coming to the judgment of the Supreme Court in the case of ***Balwant Singh vs. Jagdish Singh(supra)***. In that case there was a delay of 778 days in filing the application for brining the representatives on record. To explain the delay, the court noted that a one page application had been filed stating that the LRs were not aware of the pendency of the appeal before the court and came to know the same only in May 2010 from their counsel. It is on those facts that the Supreme Court noted that the applicants were callous and acted irresponsibly with negligence. It is also noted that they have not approached the court with clean hands. This judgment would not be applicable to the facts of the present case.

13. In the light of the above and for the reasons other than the reasons, as stated by the trial court, I uphold the order of the trial court. There are no reasons for this court to exercise its jurisdiction under Article 227 of the Constitution of India.

14. In view of the above, the present petition and all pending applications stand dismissed.

JAYANT NATH, J

FEBRUARY 20, 2017

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