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

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Date of decision: 14.03.2017

+ CM(M) 287/2017 and CM Nos. 10009-11/2017

A.S GAUR (SINCE DECEASED) THR

HIS LEGAL HEIRS

..... Petitioner

Through Mr. N.S.Dalal, Ms.Toral Banerjee and
Mr.Aman Mudgal, Advocates

versus

LAKSHMI DEVI & ANR

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 20.12.2016 by which four applications were decided i.e. one under Order 22 Rule 4 & Rule 10A CPC moved on 06.06.2009, second one under Order 22 Rule 4 CPC moved on 21.02.2015 and two applications under Section 5 of the Limitation Act dated 21.02.2015 and 13.05.2016 for condonation of delay in moving the above two applications.

2. The plaintiff/respondent No.1 has filed the present suit for cancellation, declaration and permanent injunction praying that the sale deed executed by defendant No.1 (respondent No.2 herein) in favour of defendant

No.2 on the basis of power of attorney be declared null and void as the plaintiff/respondent No.1 had not authorized defendant No.1/respondent No.2 to execute the sale deed on her behalf.

3. Defendant No.2 i.e. Sh.A.S.Gaur died on 23.07.2008. The plaintiff/respondent No. 1 filed the first application on 06.06.2009 under Order 22 Rules 4 & 10A CPC stating that the information about the death of defendant No.2 was received on the last date of hearing, namely, 02.04.2009. It is also stated that respondent No.1 was not aware about the death of defendant No.2 due to the fact that he had shifted his residence from Old Sabzi Mandi to some other place. The application also stated that the counsel for defendant No.2 at the time of providing information about the death of defendant No.2 did not disclose the date of death and did not provide full particulars of the legal representatives. Respondent No. 1 urged that she has come to know that defendant No. 2 is survived by two LRs, namely, Sh.Rajeev Gaur and Sh.Sanjeev Gaur who are sought to be impleaded. It is also stated in the application that the deceased defendant No.2 has left behind two daughters whose names are not known. A request was made to the counsel for defendant No.2 to provide the details but he has not done so. Hence, right was reserved to move an appropriate application giving the correct particulars of the legal representatives as and when respondent No.1 becomes aware of the same. Second application under Order 22 Rule 4 CPC has been moved on 21.02.2015. It is stated in the said application that in compliance of order dated 21.08.2015 counsel for defendant No.2 has vide letter provided the particulars of the two daughters of the deceased defendant No.2 i.e. Smt.Bindu Bhardwaj and Smt. Dimple Gaur. In addition to the above two daughters, there are two sons of the deceased defendant No.2,

namely, Sh.Rajeev Gaur and Sh.Sanjeev Gaur for whose substitution an earlier application had already been filed.

4. In the application for condonation of delay under Section 5 of the Limitation Act, respondent No.1 has urged that the application has been filed on time on receipt of complete particulars of the LRs of the deceased defendant No.2 which was provided by the counsel for defendant No.2 in compliance of order dated 28.01.2015 passed by the court. This information was received on 11.02.2015 and hence, the application.

5. I have heard learned counsel for the petitioners. He has vehemently argued that there is gross delay in moving the applications for impleading the LRs of the deceased defendant No.2 and the suit has abated and there are no grounds for the court to have condoned the delay. He relies upon a reply filed by a co-defendant where he submits that as far back as in 2010, the respondent No. 1 came to know about the names of the daughters of the deceased defendant No. 2, yet application to implead the said defendants has been moved in 2015.

6. I may note, at this stage, that the relevant documents have not been placed on record by the petitioners. The impugned order notes about two applications having been filed under Section 5 of the Limitation Act dated 21.02.2015 and 13.05.2016 for condonation of delay. However, only copy of one application dated 21.02.2015 has been placed on record. Further, respondent No.1 has relied upon order dated 28.01.2015 passed by the court in compliance of which order the counsel for the deceased defendant No.2 has communicated to respondent No.1 complete particulars of the LRs of the deceased defendant No.2 which particulars were received on 11.02.2015 by

respondent No.1. Copy of the said order dated 28.01.2015 has very strangely not been filed by the petitioners on record.

7. The trial court by the impugned order has noted that the petitioners have failed to disclosed the complete details about the death of defendant No.2 and the names of the LRs of defendant No.2. It noted that the defendants were duty bound to disclose to the court about the exact date of death of defendant No.2 and to furnish particulars of his surviving LRs which was not done. The trial court also noted that during the course of proceedings, defendant No.2 changed his address and the new address was not disclosed. Further, while moving the first application under Order 22 Rule 4 CPC on 06.06.2009, respondent No.1/plaintiff had reserved her right to move another application once the names of all the LRs are placed on record. The names of all the LRs were made available on 14.01.2010 and thereafter, the second application has been filed. Noting that no laxity can be attributed to the plaintiff/respondent No.1, all the applications filed by respondent No.1 were allowed by the impugned order.

8. Firstly, as already noted above, the petitioners have not filed the complete relevant record. As per the second application filed under Order 22 Rule 4 CPC, respondent No. 1 received complete details pursuant to the order of the court dated 28.01.2015. This is repeated in the application under Section 5 of the Limitation Act. The copy of the order is not placed on record by the petitioner. It is a relevant document conveniently not filed by the petitioner. The impugned order also does not take into account this order.

9. I may also note that the first application was filed by the plaintiff/respondent No. 1 for substitution of the sons as LRs on 06.06.2009. The sons filed a reply to the same. The stand taken by them was that the

daughters have relinquished their share in favour of the sons. Further, under the Delhi Land Reforms Act, the daughters have no right in the property. Having taken this stand, they refused to divulge the names of the daughters of defendant No.2.

10. Order 22 Rule 10 CPC reads as follows:-

“10A. Duty of pleader to communicate to court death of a party.- Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the court about it, and the court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”

11. Hence, the pleader who was appearing for defendant No.2 was obliged to inform the court about the death of the said party. He would also be obliged to inform about the names of the LRs of the deceased party. In the present case, there is failure to comply with the said provisions of law. The trial court has rightly given benefit of this failure to respondent No.1/plaintiff.

12. Further, there is no merit in the contention of the learned counsel for the petitioner that there are no grounds given in the impugned order to condone the delay in moving the applications in question. The court has given various reasons in the impugned order to condone the delay including the fact that in the first application filed under Order 22 Rules 4 & 10 A CPC on 06.06.2009 liberty had been sought to later on file a second application when the details of the daughters of the deceased defendant No.2 are made available, the defendants were duty bound to disclose the exact date of death of defendant No.2 and the particulars of the surviving LRs. It also noted that

there were seven suits pending between the parties in two different courts which were sought to be consolidated which might have added some confusion amongst the parties. It also noted that the proposition of law that the procedure is only a handmaid of justice and the technicalities of procedure should not come in the way of advancing substantial justice to the parties to a suit.

13. The Supreme Court in the case of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*, (2013) 12 SCC 649 held as follows:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1 (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

14. Hence, the court has to be liberal, pragmatic and justice-oriented. In the present case, the circumstances as stated above persuaded the trial court to condone the delay in filing of the applications for impleadment of the LRs of the deceased defendant no.2. The petitioners have failed to show any reason as to why this court in exercise of its supervisory power under Article 227 of the Constitution of India should interfere in the discretionary power exercised by the trial court.

15. There is no merit and the present petition is dismissed.

16. All pending applications also stand dismissed.

(JAYANT NATH)
JUDGE

MARCH 14, 2017
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