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

+ CM(M) 1258/2018 & CM APPL. 42930-42931/2018
ASHOK KUMAR MITTAL Petitioner

Through: Counsel for petitioner.

versus

SOHAN LAL (DECEASED) THR LRS Respondent
Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **12.10.2018**
CM APPL. 42931/2018 (Exemption)

Exemption allowed, subject to just exceptions.

CM(M) 1258/2018 & CM APPL. 42930/2018

Submissions have been made on behalf of the petitioner by learned counsel present. The petitioner assails the impugned order dated 04.08.2018 of the ADJ-01 (East), KKD, Delhi in M No.605/2016 whereby an application under Order 22 Rule 4 & 9 r/w Section 151 of the CPC filed by the applicants thereof arrayed as respondents to the present petition seeking setting aside of the abatement and also to bring them on record being legal heirs of the deceased/plaintiff on the averments that Shri Sohan Lal, the deceased/plaintiff expired on 13.08.2015 leaving behind Smt. Sushila Devi (wife), Shri Raj Kumar (son), Shri Vicky Yadav (son) Ms. Shikha (daughter) and Ms. Saloni (daughter) was allowed and the said abatement was set aside with the delay in filing of the application which was filed only

on 07.06.2016 after a period of ten months of the demise of the deceased/plaintiff having been condoned.

It has been submitted on behalf of the applicant/petitioner placing reliance on the verdict of this Court in ***State of Gujarat Vs. Syed Mohd. 1981 Rajdhani Law Reporter NSC 129*** and on the verdict of the Hon'ble Supreme Court in ***Lanka Venkateswarlu (D) Vs. State of Andhra Pradesh & Ors. AIR 2011 SC 1199*** submitting to the effect that the condonation of delay ought to be made only in exercise of judicial power which has essentially to be exercised within reasonable bounds known to all and that the discretion has to be exercised in a systematic manner informed by reasons. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers and liberal approach, justice-oriented approach, substantial justice cannot be employed to jettison the substantial law of limitation and it has thus been submitted on behalf of the petitioner that no substantial grounds having been brought forth by the applicants of the application under Order 22 Rule 4 & 9 of the CPC to explain the each day delay in filing the said application, the impugned order needs essentially to be set aside.

Perusal of the application which is indicated to have been allowed dated 06.06.2016, avers to the effect that the applicants i) Smt. Sushila Devi (wife), ii) Shri Raj Kumar (son), iii) Shri Vicky Yadav (son), iv) Ms. Shikha (daughter) and v) Ms. Saloni (daughter) are the legal heirs of the deceased/plaintiff who expired on 13.08.2015 and that in view of the death of the plaintiff Shri Sohan Lal, the applicants were in a state of tremendous shock and also had no source of income;

- applicants were not aware of their counsel;
- they were not aware of the pendency of the suit
- they could not contact the counsel for the plaintiff after the demise of the plaintiff after a long traumatic illness;
- Shri Raj Kumar, the eldest son of the plaintiff resided at Ahmadabad, Gujarat;
- Shri Vicky, other son of the deceased/plaintiff resided separately and was not in good terms with the applicants and now the terms have since been normalised with the Vicky;

and that on 25.05.2016, the applicants came to know from Vicky about the suit in question and contacted their counsel who on inquiry in Court apprised them that the requisite application seeking to bring on record them as legal heirs of the deceased/plaintiff would have to be filed. Through the application under Order 22 Rule 4 & 9 of the CPC filed by the legal heirs of the deceased/plaintiff *inter alia* to the effect that delay in filing the application was neither intentional nor deliberate but due to reasons detailed in the application.

It has been submitted on behalf of the present petitioner by learned counsel for the petitioner that the said application dated 06.06.2016 was not even supported with the affidavit of the son of the deceased/plaintiff named Vicky from whom the information about the suit between the deceased/plaintiff and the present petitioner was brought to the knowledge of the other applicants on the date 25.05.2016 and it has been reiterated on behalf of the petitioner that the abatement of the suit could not have been set aside and the legal representatives of the deceased/plaintiff ought not to have

been allowed to have been brought on record.

At the outset, it is essential to observe that the present petition has been filed under Article 227 of the Constitution of India, there is nothing apparently perverse in the impugned order nor does it show the exercise of any unriddle discretionary power nor any fanciful or whimsical exercise of power. The reason for so observing is to the effect that vide the impugned order itself, the learned trial Court takes into account the factum of submissions made through the application, all grounds put forth by the legal representatives of the deceased/plaintiff of the tremendous shock in the family on account of death of the deceased/plaintiff, the factum of non-awareness of the pendency of the suit, the factum of the legal heirs of the deceased/plaintiff not even being aware of the counsel who was pursuing the matter.

It is essential to observe that the application that was before the learned trial Court apart from setting forth the aspect of tremendous shock and the non-awareness of the pendency of the suit also spells out the state of shock of the legal heirs of the deceased/plaintiff, in view of the dire financial stress of the family in view of the demise of the plaintiff in view of severe ailments, taking the same into account, it is held that there is no infirmity in the impugned order.

The petition and the accompanying applications are declined.

ANU MALHOTRA, J

OCTOBER 12, 2018

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