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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 7th January, 2020
+ **CM(M) 344/2019 & CM APPL. 9045/2019**
J S SHARMA & SONS Petitioner
Through: Mr. Rajiv Ghawana & Mr. Neelaksh
Sharma, Advocate (M-9899308878)
versus
SHIV DEVI MEENA Respondent
Through: Mr. Rakesh Kakar, Advocate (M-
9810383620)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition challenges two orders. The first is an order dated 27th September, 2018 by which an application for impleadment of the legal heirs under Order XXII Rule 9 CPC was allowed, subject to payment of costs of Rs.10,000/- to be paid by the Respondent herein – landlady (*hereinafter 'landlady'*). The said order dated 27th September, 2018 passed by the ARC was challenged before the Id. ADJ, which appeal was dismissed on 1st December, 2018. Both these orders have been impugned before this Court.

2. The submission of Id. counsel appearing for the Petitioners – tenants (*hereinafter 'tenants'*) is that whenever legal heirs are to be impleaded, if the same is not done within the time prescribed in law, the suit/petition stands abated and a vested right accrues in favour of the person against whom the petition was originally filed. Thus, unless there is sufficient cause, which is shown by the person seeking condonation of delay in impleadment of the legal heirs, the same cannot be allowed in a casual manner. It is further submitted that the reasons which have been given in the application under

Order XXII Rule 4 CPC are also false, inasmuch as the landlady is quite hale and hearty. The averment in the application, that she is bed ridden, is also completely incorrect. It is also submitted that illness of the counsel's brother is also a false stand as the said counsel was appearing in other matters before various courts including the fact that the brother himself, who is a lawyer, was also appearing in various courts. The tenants also rely upon the photographs of the landlady, to argue that she is definitely not bed-ridden and even the illness of the brother of the counsel is also not a sufficient cause for condoning the delay.

3. It is further submitted by Id. counsel for the tenants that the delay in seeking impleadment of legal heirs is more than 400 days. The death itself took place on 12th September, 2014 and thereafter, the details of the legal heirs was given to the landlady on 31st January, 2015. The Trial Court recorded on 1st July, 2015 that no impleadment application was moved and the first application was filed on 4th February, 2016 when a new lawyer was engaged. The landlady also does not have any grievance that the details of the legal heirs were not given. The first application was dismissed vide the order dated 8th February, 2017 on the ground that the application was shorn of detail and no sufficient reason has been given. Thereafter, a new counsel was engaged by the landlady, who moved the present application seeking condonation of delay and impleadment of the legal heirs, which was now, allowed by the Trial Court vide the order dated 27th September, 2018. He further relies upon the judgment of the Supreme Court in **Balwant Singh (Dead) v. Jagdish Singh and Ors., (2010) 8 SCC 685** and **Ram Preeti Yadav v. U.P. Board of High and Intermediate Education and Ors., (2003) 8 SCC 311** to argue that if a person makes a false statement in an application

for condonation of delay, the same should not be considered and the application ought not to be allowed. He further submits that a liberal approach cannot be taken in such cases where the party are guilty of placing the incorrect facts before the Court.

4. Ld. counsel for the Respondent - landlady, on the other hand, submits that the landlady is a widow and she was never provided with a list of the legal heirs of the Mr. JS Sharma. This is clear from a reading of the impugned order wherein no details were given as to when the names were furnished. Further, ld. counsel submits that Mr. JS Sharma - tenant passed away in 2014 and immediately an application was filed under Order XXII Rule 4 CPC. The said application was dismissed by the Trial Court on 8th February, 2017 and for the first time, the Trial Court recorded in the said order that the petition stands abated. Ld. counsel seeks to draw a distinction between an application under Order XXII Rule 4 CPC and an application under Order XXII Rule 9 CPC to state that these two applications are different and distinct. After an order of abatement is passed, if the party shows a sufficient cause, the abatement can be set aside. He submits that even the delay in filing such an application can be condoned under Section 5 of the Limitation Act, 1963. He thus submits that after the order dated 8th February, 2017 was passed for the first time, abating the suit, the application under Order XXII Rule 9 CPC was filed within a period of 30 days and therefore the application is not barred by limitation.

5. On facts, five grounds are pleaded to argue that this is a fit case for condonation of delay, if any, in filing of an application:

- i) that the Respondent is a widow and an illiterate lady;
- ii) that she has suffered from various medical complications;

- iii) that the list of legal heirs of JS Sharma was never provided by the Petitioners;
- iv) that the costs which were imposed, were finally tendered by the Respondent - landlady;
- v) that the photographs being placed by the tenants do not controvert the medical records of the landlady.

6. He further submits that the equities are in favour of the landlady inasmuch as the shop in question was one integral shop near Yusuf Sarai, New Delhi where the tenants are running a Jewellery Shop. The father had paid the last rent in June, 2013 and it was only after notice was issued by the landlady for payment of rent that the tenants moved a rent petition and have started depositing the rent before the Trial Court. He further submits that since 2013, the landlady has not been receiving any rent whatsoever and the tenants are enjoying the shop and conducting a flourishing business. The ld. counsel relies upon the following two judgments:

- *Arun Kumar Aggarwal & Anr. v. Sudarshan Wadia & Ors., [CS(OS) 908/2008, decided on 12th July, 2011]*
- *Mithailal Dalsangar Singh v. Annabai Devram Kini, 2003 (10) SCC 691*

7. After hearing ld. counsel for the parties and perusing the record as also the two orders i.e. the order passed by the ld. ARC and the ld. ADJ i.e. the RCT, one thing is clear i.e. that the landlady is a widow and is illiterate. She initially moved an application under Order XXII Rule 4 CPC which was dismissed by the Trial Court on 8th February, 2017. The perusal of the order sheets shows that the demise of Mr. JS Sharma, was recorded on 29th

November, 2014 as under:

“List of documents filed on behalf of respondent which contains 2 DVD and his original photographs running into 12 pages alongwith rejoinder Be taken on record. Copy supplied.

Ld. counsel for respondent submits that Sh. J.S. Sharma has expired on 31.09.2014 and he is directed to supply details of LRs to petitioner for their impleadment on 31.01.2015.”

8. Thereafter, on 31st January, 2015 and on 18th April, 2015, the Presiding Officer was on leave. On 1st July, 2015, the Id. ARC records that the application for impleadment of legal heirs has not been filed. There is no evidence on record to show as to when the details of LRs was furnished. The only evidence relied upon is a screen shot showing the creation of a Word Document on the computer of the counsel which shows the creation date as 30th January 2015.

9. Thereafter on 19th February, 2016, the application under Order XXII Rule 4 CPC was filed and the same was decided by the Id. ARC on 8th February, 2017. In the said order the Id. ARC notes that the remedy available to the Respondent was to move an application under Order XXII Rule 9(2) CPC. The observation of the Id. ARC is as under:

“ ...

7. The petitioner was aware the death of the respondent since 29.11.2014 but failed to moved any application within the period of 90 days for the impleadment of the legal heirs as provided under Article 120 of the Limitation Act, 1963. If the application for impleadment of legal heirs does not come within the period of 90 days, the proceedings are abated. Under Order XXII Rule 4(3), where within the time limited by law no application is made for the

impleadment of legal heirs, the petition shall abate against the deceased respondent. In the eventuality of abatement of the case the only remedy available to the petition is to get the abatement set aside under Order XXII Rule 9(2) CPC by moving an application proving that the was prevented by any sufficient cause from continuing the suit.

8. Undisputedly, the petition has abated after the lapse of the period of 90 days as the petitioner has not moved any application for impleadment of legal heirs and there is no application for setting aside the abatement. Therefore, for want of an application for setting aside the abatement, the petition stands abated.

9. The application under Section 5 of Limitation Act is for condoning the delay in moving the application for impleadment of legal heirs also does not hold ground because not only is there is a specific provision for setting aside abatement which has not been taken recourse to but also the reasons mentioned in the application are also not supported by any medical documents to prove that the petition was actually medical incapacitated from moving around and pursuing this case.

10. Both the application are under order XXII rule 4 CPC and an application under section 5 of the limitation Act therefore on the basis of aforesaid discussion are dismissed. Eviction petition stands abated.”

10. A perusal of the above shows that the primary reason for dismissal of the application is that it has been moved under the wrong provision i.e. Order XXII Rule 4(3) CPC instead of Order XXII Rule 9(2) CPC as the suit already stood abated. In the operative portion of the above order, the Id. ARC records that the eviction petition stands abated. Prior to this date, there is no order recording that the eviction petition is abated. However, there is

no doubt that under Order XXII Rule 4 CPC, the abatement does not require a specific order to be passed by the Court.

11. In any event, the application under Order XXII Rule 9 CPC is moved on 28th February, 2017 and has been decided by the impugned order dated 27th September, 2018. In the order passed by the Id. ARC, the Id. ARC has considered the facts in detail including the stipulations of Order XXII Rule 9 CPC. The Id. ARC has come to the conclusion that the said two provisions operate in different fields and the medical problems which the landlady faced was sufficient to show that the landlady did have old-age related issues. The Id. ARC further records that there is no specific date which can be shown by the tenants as to when the details of the legal heirs were communicated to the landlady. Insofar as the negligence of the counsel is concerned, the Id. ARC holds that, presuming the counsels were negligent, the party cannot be made to suffer. This order dated 27th September, 2018 has been upheld by the Id. RCT by holding that the application is well within time and the grounds are made out for condoning the delay. The Id. RCT has also considered the judgment of the Supreme Court in **Balwant Singh (supra)**. The relevant paragraphs of the judgment of the RCT read as under:

“The judgments relied upon by the Ld. Counsel for the appellant does not help the appellant, as no contrary view has been taken by the Hon’ble Supreme Court in ‘Balwant Singh Vs Jagdish Singh & Others’, (2010) 8 SCC 685.

No doubt the abatement was a favourable order as far as the appellants are concerned, but no vested right has come to them in as much as this petition was an eviction petition sought by a widow on grounds of bonafide need in which the appellants have sought leave to defend, which matter is to be considered on

merits.

However, in view of the fact that the petition is founded on the medical status of the respondent, which was questioned by the appellants in their leave to defend application, the observations made by the Ld. ARC while allowing the application and setting aside the abatement in so far as it comments on the medical status of the respondent will have no bearing on the disposal of the application for leave to defend and the eviction petition and no observations made in the impugned order will guide the Ld. ARC while disposing of the leave to defend application as well as the main petition. The appeal is accordingly, dismissed with these directions.”

12. The Id. counsel for the tenants has vehemently urged that as per the judgment of ***Balwant Singh (supra)*** of the Supreme Court, a vested right has accrued in favour of the tenants and therefore, the same cannot be taken away without sufficient cause. The observations of the Supreme Court in ***Balwant Singh (supra)*** shows that, while the Supreme Court confirms that the term ‘sufficient cause’ has to receive a liberal construction, the reasonableness of the said liberal construction has to be understood in the general connotation. The explanation has to be plausible and has to persuade the Court. The observations of the Supreme Court are set out hereinbelow:

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a

party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

27. The application filed by the applicants lacks in details. Even the averments made are not correct and *ex facie* lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.

...

32. It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to

have been enacted purposelessly.

33. Furthermore, it is also a well-settled canon of interpretative jurisprudence that the Court should not give such an interpretation to the provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the learned counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law.

34. Liberal construction of the expression “sufficient cause” is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable....”

13. A perusal of the above observations of the Supreme Court clearly shows that unless there is negligence or mala fide conduct, found by the Court, an application to set aside the abatement can be allowed subject to sufficient cause being shown.

14. Coming to the facts of the present case, the tenants are clearly conducting the business of Jewellery from the tenanted premises. The tenants have taken unreasonable pain in placing photographs of the landlady on record to show that she is taking a walk in the park. Such submissions ought not to be entertained by the Court, especially when it involves a

widow and an illiterate lady. The medical documents which have been placed on record by the landlady clearly shows that she is suffering from old age problems and the same cannot be disputed as the prescription given by the AIIMS (OPD) is clear and categorical to this effect. Further, the case being one of eviction being sought against the tenants, by virtue of abatement and Order XXII CPC for non-impleadment of legal heirs, the landlady and her family cannot be deprived of their ownership rights of a shop located in a prime commercial area and the benefit to the tenant cannot be so disproportionate. In effect, if the petition stands abated, the landlady may be deprived of her right to seek eviction. That would not only be inequitable but would be unjust. This is not a case where the landlady has not availed of her remedies. Initially, an application under Order XXII Rule 4 CPC was filed followed by an application under Order XXII Rule 9 CPC. Even if it is taken that the abatement is automatic, Order XXII Rule 9 CPC is liberal and sufficient cause can be shown under Section 5 of the Limitation Act. This is not a case which the Court feels that there has been negligence or inaction by the Respondent - landlady. The tenants are clearly interested in retaining the premises for as long as they can inasmuch as they are conducting a flourishing business from the said shop for a mere payment of Rs.2,200/- per month, which is allegedly being deposited in the court. The landlady has in effect not earned a penny for several years from the shop owing to the pendency of the litigation. She has not gained any advantage by delaying the filing of the application either under Order XXII Rule 4 CPC or under Order XXII Rule 9 CPC. In cases of this nature, the Court definitely ought to adopt a liberal approach and a technical and blinkered approach cannot be taken by the Court.

15. Under these circumstances, this Court does not find any fault in the two impugned orders passed by the ARC and the RCT. The manner in which the tenants have completely ensured that the petition is not decided and the leave to defend is continuously delayed, makes the tenants liable to pay heavy costs to the Respondent - landlady. Further, the manner in which the photographs and videos have been placed on record of an elderly lady who may be hesitant to even go about her daily activities, owing to such conduct by the tenant, simply to allege that the Respondent is in good health, is in the opinion of this Court in bad taste.

16. The finding that there is no vested right in favour of the tenants is upheld as the tenants cannot, on the ground that the petition has abated, claim a vested right to continue to enjoy rights in the tenanted premises, when admittedly they do not have any independent rights in the premises. Accordingly, the petition is dismissed with costs of Rs.50,000/- to be paid to the Respondent - landlady. All pending applications are also disposed of.

17. The leave to defend application shall be decided in a period of 3 months from today, independent of the observations made in the orders deciding the applications under Order XXII Rule 4 and Order XXII Rule 9 CPC. The costs shall be paid on or before the next date of hearing before the Id. ARC. The adjustment for costs of Rs.10,000/- imposed on the Respondent - landlady is granted to the Petitioners – tenants and accordingly Rs. 40,000/- would be payable.

PRATHIBA M. SINGH
JUDGE

JANUARY 07, 2020/Rahul/dk/A.S