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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 288/2020 and CM APPLs. 8561-62/2020**

SHAILENDER KUMAR Petitioner

Through: Mr. Naveen Kumar Chaudhary,
Advocate (M: 9810372713).

versus

UMED SINGH (SINCE DECEASED) THR LRS &
ORS

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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03.03.2020

1. This petition challenges the order dated 1st November, 2019 by which Respondent No.1's/Plaintiff's (*hereinafter*, "Plaintiff") application under Order XXII Rules 3 and 9 CPC, for setting-aside the dismissal of the suit for partition as having abated and for impleadment of the Plaintiff's legal representatives (*hereinafter*, "LRs"), has been allowed.
2. The Plaintiff had filed a suit for partition and rendition of accounts against his siblings, all being legal heirs of Late Mr. Narain Singh, in respect of various properties. The suit was originally instituted in this Court in 2008. Due to increase in the pecuniary jurisdiction of the High Court, the suit was transferred to the District Court. During the pendency of the suit, the Plaintiff passed away on 31st August, 2012, leaving behind his wife, two sons and a daughter as his LRs.
3. The application for impleadment of the Plaintiff's LRs was originally filed on 29th November, 2012 but the same was, however, not followed up

due to a mistake in the counsel's office. Thereafter, the suit stood abated and was dismissed on 6th August, 2013. Another application for setting-aside the order of dismissal was filed on 6th September, 2013. In the said application, the Trial Court has passed the impugned order dated 1st November, 2019 by which it has allowed the application and restored the suit.

4. Ld. counsel for the Petitioner/Defendant No.3 (*hereinafter, 'Defendant No.3'*) submits that the Trial Court could not have condoned the delay and set-aside the abatement as there was no explanation given as to why the application was not filed within the time prescribed in law. It is further submitted that during the pendency of the application, Defendant No.3 himself has filed a suit for partition in this Court and thus, his rights are substantially affected by the setting-aside of the order of dismissal and the restoration of the suit in the Trial Court. Ld. counsel submits that in the suit pending before the High Court all the siblings are parties and the properties which are the subject matter of the suit before the Trial Court are also the subject matter of the suit before the High Court.

5. This Court has perused the impugned order dated 1st November, 2019. The Trial Court has considered the various events which transpired after the death of the Plaintiff, including the fact that the original application which was filed on 29th November, 2012 and was dated 16th November, 2012, bore the stamp of the High Court, which shows that the application was, in fact, filed. The same was, however, returned under objections and was not re-filed. In the meantime, the suit was transferred to the District Court. The Trial Court has observed that the second application for setting aside abatement is thus liable to be allowed as the Plaintiff should not be non-suited on technical grounds.

6. There has been some lack of diligence on the part of the Plaintiff's counsel's office, however, the dates do show that after the demise of the Plaintiff on 31st August, 2012 the application for impleadment was filed on 29th November, 2012. Though the same ought to have been followed up with due diligence, the application was returned under objections and was not re-filed. The second application was filed after the suit abated within a period of almost 35 days since the abatement. Thus, there has been some negligence, however, it cannot be said that the Plaintiff has completely failed to follow-up on the suit in question. When suits are transferred from one court to another, litigants face enormous difficulties for eg., engaging a new counsel, tracing out the court complex where the matter is transferred to, making arrangements to reach a new court room after tracing out the same etc. Thus, the re-filing of the application could have also been mired with confusion. Moreover, the abatement of a suit has extremely serious consequences for the parties whose rights are affected. The Trial Court has given adequate reasons to justify the setting aside of the abatement. The impugned order being discretionary in nature, in such a matter, exercise of jurisdiction under Article 227 of the Constitution of India is not warranted.

7. Ld. counsel for Petitioner/Defendant No.3 submits that he would be seeking consolidation of the Trial Court suit with the suit pending before the High Court. For the said purposes, Defendant No.3 is always at liberty to avail of the remedies available for consolidation/transfer. The impugned order or the present order would not come in the way of Defendant No.3 seeking transfer of the Trial Court suit or consolidation of the two suits pending before the High Court and the Trial Court, which shall be dealt with in accordance with law by the appropriate forum.

8. With these observations, the petition is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

MARCH 03, 2020

MR/T