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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7179 OF 2021

Chandralok (B) CHS Ltd.
Duly registered under the Co-operative
Societies Act, having its registered
Office at : A/97, Jagmohandas Road,
Mumbai – 400 006.

... Petitioner

Versus

1. Manish Rajnikant Jaitha
Aged about 51 years,
Occ. : Business, an adult Indian
Inhabitant, residing at 10,
Koregaon Road, Pune – 1.

2. Anuradha wd/o Krishnakant Jaitha

3. Sanjay Krishnakant Jaitha
Aged about 85 & 62 years respectively,
Occ. : Business, Both of Mumbai,
adult Indian Inhabitants, residing at :
2-B, Brighton No.2, Nepeansea Road,
Rungta Lane, Mumbai – 400 006.

... Respondents

Mr. Darshit Jain a/w Mr.Rahul Singh for Petitioner.
Mr. Sachin Chavan for Respondents.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 8TH APRIL 2022

PRONOUNCED ON : 6TH MAY 2022

JUDGMENT :

1. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 30th August, 2021 passed by the Small Causes Court at Mumbai in R.A.E. Suit No.547 of 2015 (the “said suit”) allowing Application impleading Respondents No.2 and 3 as to Plaintiffs to the said suit.

2. Petitioner is a co-operative Society under the Maharashtra Co-operative Societies Act, 1960. One Shri.Krishnakant Chandrakumar Jaitha and Respondent No.1 – Shri.Manish Rajnikant Jaitha being Plaintiffs No.1 and 2 respectively, had filed the said suit against Petitioner Co-operative Society as the Defendant therein on the grounds of failure on the part of Petitioner to rectify the alleged breaches of clauses 2(a) to (i) and 2 (l) of the lease dated 2nd February, 1972 executed between the Plaintiffs as Lessors and the Defendant as Lessee for a period of 999 years including grounds of unauthorized permanent alterations and additions, failure to pay arrears of rent, seeking a decree and order against the Defendant Co-operative Society to quit and vacate the suit land bearing C.S.No.238 admeasuring 2737 sq.yds., Malabar Hill Division, situate

at A/97, Jagmohandas Road, Mumbai - 400 006 along with structure building (the “said premises”) and to handover and deliver to the Plaintiffs, vacant and peaceful possession thereof.

3. On 23rd September, 2015, Petitioner herein filed its Written Statement denying the averments in the Plaint and *inter alia* raising preliminary issues of jurisdiction and maintainability.

4. On 3rd March, 2017, the Small Causes Court framed issues of jurisdiction and maintainability as well as other issues in respect of the breaches alleged by the Original Plaintiffs.

5. On 29th December, 2017 Original Plaintiff No.1 expired. According to Petitioner, the suit automatically abated on 29th March, 2018 by operation of law under Order 22 Rule 3 read with Article 120 of the Limitation Act, 1963 and that the period for filing application for setting aside abatement under Article 121 of the Limitation Act expired on 29th May, 2018.

6. Settlement talks were initiated on 4th October, 2018. Matter was referred to mediation on 30th November, 2018 by the trial court.

However, the mediation failed on 17th December, 2018.

7. On 4th August, 2019, the Respondent No.1 / the Original Plaintiff No.2 filed application in the trial court seeking deletion of the Plaintiff No.1 as he had died on 29th December, 2017 and to add in his place Respondents No.2 and 3 as to Plaintiffs in the said suit which was objected to by Petitioner by filing an Affidavit-in-Reply dated 14th November, 2019 after which Respondent No.1 filed Affidavit-in-Rejoinder dated 19th March, 2020.

8. The trial court passed an order dated 17th March, 2021 rejecting the First Respondent's aforesaid Application at Exh.18.

The said order is quoted as under :-

"1. This is an application filed by the power of attorney for plaintiff No.2 requesting to bring legal representatives of deceased plaintiff No.1 on record and make them plaintiffs.

2. As per Order 22 Rule 2 of the Code of Civil Procedure, 1908, any party can inform to the Court about death of the plaintiff and the Court may implead them as a party, if cause of action survives in favour of legal representatives. However, one person who deserves to be plaintiff should make an application.

3. The opinion of this Court is that if the legal representatives of deceased plaintiff No.1 deserves to be plaintiffs, they should make an application signed and verified by them. If such application is

made, it will be decided on its merit. The learned advocate for the plaintiffs expressed his willingness to make such application separately. For this reason, as the application is not in proper form, without going into the merits, the application is rejected.”

9. The aforesaid order was not challenged by Petitioner herein.

10. Respondents No. 2 and 3 filed an Application dated 26th March, 2021 (Exh.22) for joining/impleading them as Plaintiffs to the said Suit. Petitioner filed an Affidavit-in-Reply dated 9th August, 2021 objecting to the same.

11. By an order dated 30th August, 2021, the trial court allowed Application dated 26th March, 2021 at Exh.22 for inserting the names of Respondents No.2 and 3 as Plaintiffs in the said Suit. The said order is quoted as under:-

“ORAL ORDER :

1. *This is an application made by Anuradha w/d of Krishnakant Jaitha and Sanjay Krishnakant Jaitha for joining them as a party in this suit. The application is opposed by defendants by filing their say below Exh.23.*

2. *Perused the say and application. Heard Ld. Advocates for both sides. It appears from the record that though my Ld. Predecessor has called the say of other plaintiff, but he failed to file say to this application.*

3. I have gone through the record. It appears from the record that plaintiffs have filed the suit against defendants for eviction and possession of the suit premises. As per the contents of this application on oath applicants stated that plaintiff No.1 died on 29/12/2017 leaving behind the proposed plaintiffs being the only heirs and legal representatives. Suit cause of action also continued in favour of the proposed plaintiffs. The matter was referred to mediator, but it could not be settled between the parties. Proposed plaintiffs are proper and necessary parties and also entitled to the benefit of the result of the suit. Applicants prayed that, if any delay in taking out this application for amendment of plaint be condoned. It appears from Annexure-I filed with Exh.18 that Krishnakant C. Jaitha died on 29/12/2017. It appears from the record that my Ld.Predecessor has rejected application below Exh.18 without going to the merits, as the application was not in proper form. The order of abatement of the suit is not on record. The applicants have not presented present application within limitation. It appears from the verification clause of the present application that Anuradha is the widow of deceased Krishnakant and Sanjay is the son of deceased Krishnakant. Considering the relationship between the deceased and present applicants it appears that applicants/proposed plaintiffs are proper and necessary parties to the suit and they are entitled to the benefits of the result of the suit. Suit cause of action also continued in favour of the proposed plaintiffs. Applicants have stated on oath in the application that matter was not settled between them before the mediator. This is sufficient reason to condone the delay caused for filing the present application. Considering the above facts and circumstances, the application deserves to be allowed. Hence, I proceed to pass the following order.

“ORDER

- 1 *Application is allowed.*
- 2 *The delay caused in filing this application is hereby condoned, subject to costs of Rs.1,000/- (Rs.One Thousand Only) payable to the defendants.*
- 3 *The deemed order of abatement of suit is hereby set aside.*
- 4 *The plaintiffs are directed to delete the name of plaintiff No.1 Krishnakant Chandrakumar Jaitha from the array of plaint in the title clause of the suit.*
- 5 *Plaintiffs/Applicants are directed to insert the names of proposed plaintiffs i.e. Anuradha w/d of Krishnakant Jaitha as plaintiff No.1(a) and Sanjay Krishnakant Jaitha as plaintiff No.1(b).*
- 6 *The plaintiffs to carry out amendment accordingly within 14 days.*

Sd/-
[S. B. Todkar]
Judge, Court of Small Causes,
Mumbai.
[Court Room No.11].”

Date : 30/08/2021.

12. This Petition is filed challenging this very order for the following reliefs:

- a) *This Hon’ble High Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate Writ, Order or*

Direction calling for the papers and records in RAE Suit No.547 of 2015 pending before the Hon'ble Small Causes Court at Bombay and after examining the legality, validity and propriety of the Order dated 30.08.2021 (Exhibit "H" hereto), be pleased to quash and set aside the said Order dated 30.08.2021 (Exhibit "H" hereto) and reject the Respondents' Application (Exhibit "F");

b) In the alternative to prayer (a), This Hon'ble High Court be pleased to issue a writ of certiorari or a writ in the nature of certiorary or any other appropriate Writ, Order or Direction calling for the papers and records in RAE Suit No. 547 of 2015 pending before the Hon'ble Small Causes Court at Bombay and after examining the legality, validity and propriety of the Order dated 30.08.2021 (Exhibit "H" hereto), be pleased to remand the Application at Exhibit - 22 for fresh consideration by the Trial Court, after considering all the contentions raised by the Petitioner."

13. It is submitted that the operation of the impugned order has been stayed by an order of the trial court vide order dated 15.09.2021 and continues till 30th June, 2022.

14. Petitioner's case is that the suit has abated automatically by operation of law as no application for bringing the legal heirs on record was made within the period of 90 days from the death of original Plaintiff No. 1. Further there was even no application made within the period of 60 days from the death of the original Plaintiff

No. 1 to set aside the abatement. Without prejudice, it is submitted that there is an unexplained gross delay of 1195 days by the Respondents No. 2 and 3 in filing the application dated 26th March 2021 giving mediation as an explanation which cannot be considered as sufficient cause explaining the delay.

15. Mr. Darshit Jain, Ld. Counsel on behalf of Petitioner, contends that after the death of the original Plaintiff No. 1, on 29 December 2017, by virtue of Order 22, Rule 3 (2) of the Code of Civil Procedure (the “CPC”), read with Article 120 of the Limitation Act, 1963 (the “**Limitation Act**”) which provides for a period of 90 days from the death of the deceased to have the legal heirs /representatives to be made parties to the suit, as no application was made under Order 22 Rule 3 (1) of the CPC, the suit automatically abated on 29th March, 2018 by operation of law and no specific order of the trial court was necessary for recording the abatement. He submits that Article 121 of the Limitation Act prescribes a period of 60 days from the date of abatement to set aside an abatement. That the suit abated on 29th March, 2018 and the Applicants were required to file an application for setting aside the abatement within 60 days thereof i.e. by 29th May, 2018. However, no such application was made during the

prescribed period by Respondents No. 2 or 3. He would submit that once the suit is abated no further application can be taken out without sufficient cause and plausible explanation.

16. Ld. Counsel further submits that Respondents No. 2 and 3 have filed application dated 26th March, 2021 only seeking to be joined as parties but the said application does not contain any prayer for condoning delay. It is submitted that in the absence of any prayer for condoning the delay, the trial court could not have condoned the same in view of the limitation period contained in Article 121 of the Limitation Act. He refers to the decision in the case of **State of Kerala V/s. Madhavakurup Ramachandran Pillai [AIR 1999 Ker 359 (DB)]**. Without prejudice to the aforesaid contention Ld. Counsel submits that Respondents No.2 and 3 have filed the said application after a gross delay of 1195 days for being impleaded as necessary and proper parties. He submits that mediation between the parties cited by the Ld. trial court in the impugned order for explaining the delay cannot be sufficient cause as Respondents No.2 and 3 were not parties to the mediation. He submits that it is a settled principle that in order to seek condonation of delay one must show sufficient cause and give

justifiable explanation. He relies upon the decision in the case of **Brijesh Kumar & Ors. V/s. State of Haryana & Ors [(2014) 11 SCC 351]**. He also relies upon the decision in the case of **Balwant Singh V/s. Jagdish Singh [(2010) 8 SCC 685]** to submit that Limitation Act is a substantive law and cannot be overridden without sufficient and justifiable reasons.

17. On the other hand Mr. Chavan, Ld. Counsel representing the Respondents, would submit that Respondents No. 2 and 3 are respectively the wife and son of the deceased original Plaintiff No.1 having interest in the said premises and in the result of the litigation. Ld. Counsel submits that in the application made on 26th March, 2021, where in paragraph 2 thereof it is not only pleaded that the matter was referred to mediation but could not be settled and that therefore if there was a delay in taking out the application for amendment of the plaint for Respondents No. 2 and 3 to be joined as parties in the suit, the same may be condoned. Ld. Counsel submits that therefore the contention on behalf of Petitioner that there is no such averment in the said application is not correct.

18. Ld. Counsel for the Respondents submits that Rule 1 of Order

22 of the CPC provides that if the right to sue survives, then the death of the Plaintiff shall not cause abatement. Rule 2 provides that in the case of death of one Plaintiff where the right to sue survives, then the court has to cause an entry to that effect on record and proceed with the suit at the instance of the surviving Plaintiff. He submits that Rule 9 (3) empowers the legal representatives of the Plaintiff to apply for setting aside the abatement or dismissal by making out a case for sufficient cause and the court may allow such application upon such terms as to the cause or otherwise. Ld. Counsel submits that as the Original Plaintiff No.1 and 2 were co-owners of the said premises and the suit is filed for eviction and recovery of possession against Petitioner, on account of the death of Plaintiff No.1, the right to sue survives upon the Plaintiff No.2 and therefore, the suit does not abate. He submits that since the proposed Plaintiffs are the legal heirs and representatives of the deceased Plaintiff No.1 and having interest in the said premises, they are entitled to continue to prosecute the suit as the right to sue survives. Ld. Counsel has relied upon the following decisions in support of his contentions:

- (i) *Ambalika Padhi and Another V/s. Radhakrishna Padhi and Others [1992 (1) SCC 667]*
- (ii) *Ha Malabari V/s. Nasiruddin Pirmohmad [1997 (8) SCC 58]*
- (iii) *Mahendra Kumar V/s. Lalchand [2001 (2) SCC 619]*
- (iv) *Manovikas Kendra Rahabilitation and Research Institute V/s. Premprakash Lodha [2005 (7) SCC 224]*

19. It is submitted that the delay in making the application was bonafide as there was an attempt to resolve the dispute amicably with Petitioner so as to put an end to the litigation and therefore the matter was referred to mediation by the trial court which unfortunately failed. Ld counsel submits that since the mediation failed there was no option with the Respondents other than to be added as parties to the suit. He submits that a liberal approach and interpretation needs to be adopted while considering condonation of delay application and deciding sufficient cause in the facts of this case.

20. Ld. Counsel relies upon the following decisions in support of his contentions:

- (i) *Ram Nath Sao Alias Ram Nath Sahu and Others V/s. Gobardhan Sao [2002 (3) SCC 195]*
- (ii) *Mithailal Dalsangar Singh V/s. Annabai Devram Kini [2003 (10) SCC 691]*

21. It is also submitted on behalf of Respondents that if the Respondents No.2 and 3 are not allowed to be impleaded in the suit, then the suit would stand abated against Plaintiff No. 1. However, the suit will not abate against Plaintiff No. 2 being a suit for enforcement of a right in property and there is a possibility of a decree for recovery of possession in his favour leading to the possibility of contradictory decrees. That therefore it is incumbent that the order of setting aside of the abatement be upheld and the Respondents No. 2 and 3 be added as co-Plaintiffs to the suit so that the suit can proceed and be adjudicated on merits.

22. Mr.Chavan submits that the order of the trial court is well reasoned and does not suffer from any infirmity, illegality or perversity and therefore no interference is called for by this court and the Petition ought to be dismissed.

23. I have heard Mr. Darshit Jain on behalf of Petitioner and Mr. Sachin Chavan on behalf of the Respondents and with their able assistance have perused the papers and proceedings. This Petition was heard on 8th April 2022 when the following order came to be passed:

- “1. Closed for orders.*
- 2. Parties are permitted to tender their written submissions within a period of two weeks.”*

24. Though no reply has been filed in the Petition but pursuant to the above order, written submissions on behalf of the Respondents have been filed on 19th April, 2022 and Petitioner's written submissions have been filed on 25th April, 2022.

25. The basic facts are not in dispute. R.A.E. Suit No.547 of 2015 had been filed by Shri. Krishnakant Chandrakumar Jaitha and Respondent No.1 - Shri. Manish Rajnikant Jaitha being Plaintiffs No.1 and 2 respectively, against Petitioner Co-operative Society as the Defendant therein on the grounds of failure on the part of Petitioner to rectify the alleged breaches of clauses 2(a) to (i) and 2 (1) of the lease dated 2nd February, 1972 executed between the

Plaintiffs as Lessors and the Defendant as Lessee for a period of 999 years including grounds of unauthorized permanent alterations and additions, failure to pay arrears of rent, seeking a decree and order against the Defendant Co-operative Society to quit and vacate the suit land and to handover and deliver to the Plaintiffs, vacant and peaceful possession thereof. During the pendency of the Suit and after the framing of issues, on 29.12.2017, Plaintiff No. 1 died and Plaintiff No.2 is the surviving Plaintiff. On 14.10.2018 settlement talks commenced. Matter was referred to mediation on 30.11.2018. On 17.12.2018, the mediation failed and on 4th August, 2019, the Respondent No. 1 (Original Plaintiff No. 2) filed an application seeking deletion of the Plaintiff No. 1 and addition of Respondents No. 2 and 3 as Plaintiffs in the said suit. To this application, Petitioner had objected on the following grounds:

- “a. The Application suffered from gross and unconscionable laches apart from being hopelessly barred by the law of limitation.*
- b. The Applicants had not sought setting aside of abatement and did not set out any grounds in support thereof.*
- c. The Application did not seek any consequential amendment.*
- d. The deponent of the Application had no authority to file the same.*

e. The process of mediation was undertaken at least 246 days after abatement of the Suit and would not constitute cause for condonation of delay.”

26. The Respondent No. 1 also filed an Affidavit-in-Rejoinder dated 19th March 2020. Thereafter an order dated 17th March 2021 came to be passed whereby the said application by Respondent No. 1 (Original Plaintiff No. 2) for deleting Plaintiff No. 1 and adding Respondents No. 2 and 3 was rejected without going into the merits as being not in proper form. The trial court was of the view that pursuant to Order 22 Rule (2) of the CPC, if the legal representatives of the deceased Plaintiff No.1 deserved to be Plaintiffs, they should make an application signed and verified by them and if such an application is made, the same would be decided on its merits. It was also recorded that the proposed Plaintiffs' advocate had expressed his willingness to make such an application separately. This order has not been challenged by Petitioner society. It is therefore, not necessary for this Court to express any views in respect of the said order as the same is not in challenge. Thereafter, an application dated 26th March 2021 was filed on behalf of Respondents No. 2 and 3 for joining/impleading them as Plaintiffs in

the said suit. Petitioner herein filed its say and after hearing the advocates and going through the record, the impugned order dated 30th August, 2021 came to be passed by the Small Causes Court at Mumbai, setting aside the abatement and directing the insertion of Respondent Nos. 2 and 3 as Plaintiffs in the suit.

27. Emphasising on deciding matters on merits and construing the provisions of Order 22 in the aid of doing substantial justice between the parties, in **Sardar Amarjit Singh versus Pramod Gupta [(2003) 3 SCC 272)]** the Hon'ble Supreme Court observed:

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaiden of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any substantial justice claim remain

intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice..."

28. In **Mithailal Dalsangar Singh and Others V/s. Annabai Devram Kini and Others [(2003 (10) Supreme Court Cases 691]** the Hon'ble

Supreme Court said:

“8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside abatement. So also a prayer for setting aside abatement as regard one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.”

The Hon'ble Supreme Court further went on to add:

“9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of 'sufficient cause' within the meaning of sub-rule (2) of Rule 9 of Order 22 of the CPC and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction.”

29. It will be useful to set out the provisions of Rules 1 to 9 of Order 22 of the CPC as under:

**“ORDER XXII
DEATH, MARRIAGE AND INSOLVENCY OF
PARTIES**

1. No abatement by party's death, if right to sue survives.- *The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.*

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.- *Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs*

alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.- (1) *Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.*

(2) *Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.*

4. Procedure in case of death of one of several defendants or of sole defendant.- (1) *Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a part and shall proceed with the suit.*

(2) *Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.*

(3) *Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.*

[(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.]

4-A. Procedure where there is no legal representative.-

(1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for

the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit.

(2) Before making an order under this rule, the Court-

(a) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(b) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.

5. Determination of question as to legal representative.- *Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:*

[Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.

6. No abatement by reason of death after hearing.- *Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been*

pronounced before the death took place.

7. Suit not abated by marriage of female party.-

(1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject matter of the decree.

8. When plaintiff's insolvency bars suit.- (1)

The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

(2) Procedure where assignee fails to continue suit, or give security- *Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.*

9. Effect of abatement or dismissal.-(1) *Where a suit abates or is dismissed under this Order, no*

fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877 (15 of 1877) shall apply to applications under sub-rule (2).

30. Section 5 of the Limitation Act is also relevant and is quoted as under:

5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

31. As can be seen, Order 22 deals with creation, assignment and devolution of interest during the pendency of suits and appeals. Order 22 seeks to take away the right of the Plaintiff or Appellant

from proceeding with the suit or appeal on the ground that the suit instituted or appeal preferred by him has abated. Abatement kills the right to sue and has the effect of unceremoniously terminating pending legal proceedings without adjudication on merits. It has therefore to be strictly construed and applied only in those cases to which its applicability is undoubtedly attracted. Therefore, the provision of abatement has to be construed strictly, but the prayer for setting aside the abatement has to be construed liberally. The purpose of substitution of parties is to consider the case on merits. The object of substitution is limited to the extent by allowing the Plaintiff or Appellant to continue the litigation so that adjudication of rival claims can be done by a Court in accordance with law.

32. Where a party to a suit dies, therefore the first question which requires consideration is whether the right to sue survives? Order 22 Rule 1 clearly provides that the death of a Plaintiff or defendant shall not cause the suit to abate if the right to sue survives. The suit can be continued by or against heirs and legal representatives of the deceased Plaintiff or defendant, as the case may be. The expression “right to sue” has not been defined in the CPC but it may be construed to mean “right to seek relief” or “right to bring a suit

claiming relief". In the case of **Sarat Chandra v. Nani Mohan (1906) 36 Cal 799 (801)**, it has been held by the Calcutta High Court that "right to sue means the right to bring a suit for the same relief which the deceased Plaintiff asserted at the time of his death". The survival of the right to sue on the death of the Plaintiff is an issue that can be resolved on a combination of several facts and circumstances. As a general rule all rights of action and all demands whatsoever existing in favour of or against a person at the time of his death survive to or against his representatives. But in cases of personal actions i.e. actions where the relief sought is personal to the deceased or the rights intimately connected with the individuality of the deceased, the right to sue will not survive to or against his representatives. Thus contracts involving the exercise of special skill like a promise to paint a picture do not bind the representatives of the promisor nor do they create a right in them that can survive the death of the promisor. In these cases, the maxim *actio personalis mortui cum persona* i.e. a personal action dies with the person applies. Certain acts and omissions that are purely personal in nature will not survive. The right or liability in such cases dies with the person and does not survive and therefore cannot be enforced by or against his heirs or representatives. But if

the right to sue survives against the legal representatives of the Plaintiff, the suit can continue.

33. In this case, Plaintiff No. 1 and Plaintiff No. 2 were the lessors of the said premises on lease to petitioner who is a lessee. The suit is for eviction of petitioner for the alleged breaches of the lease agreement and recovery of possession in respect of the said premises. This right is not a personal right but a right to recover possession in respect of the said premises after evicting the petitioner lessee. It is a property right. The heirs of the deceased Plaintiff would in have a right to bring a suit for the same relief which the deceased Plaintiff No. 1 asserted at the time of his death and as such the right to sue would survive in their favour. Since right to sue has survived, in accordance with Rule 1 of Order 22 the said suit cannot abate.

34. Having observed that right to sue survives in the facts of the case, let us consider the procedure under Order 22 Rule 3. Under Rule 3(1), where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue

survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit and under Rule 3(2), where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

35. Ambit and scope of Rules 2 and 3 of Order 22 is different. If the case is covered by Rule 2, the right to sue survives to the surviving Plaintiff or Plaintiffs or against the surviving defendant or defendants then there is no question of abatement of the suit. The court in such cases will record such fact and proceed to decide the suit. But if the case falls under Rule 3 (death of one of the several Plaintiffs or sole Plaintiff) and the right to sue does not survive to the surviving Plaintiff or Plaintiffs or a sole Plaintiff or sole surviving Plaintiff dies and the right to sue survives, the Court on an application, shall cause the legal representative of the deceased Plaintiff to be made a party and shall proceed with the suit and if no such application is made within the law of limitation, the suit will

abate with respect to the deceased Plaintiff.

36. As per Order 22, Rule 9 where a suit abates or is dismissed under Order 22, no fresh suit shall be brought on the same cause of action but the plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

37. Under Rule 9 (3) it is provided that the provisions of Section 5 of the Indian Limitation Act shall apply to applications under Sub rule 2.

38. Rule 5 of Order 22 deals with the determination of the question as to legal representatives of a deceased Plaintiff or Defendant.

39. In the case at hand originally there were two Plaintiffs. The Plaintiff No. 1 expired. The Plaintiff No. 2 survived the Plaintiff

No. 1. The Respondents are Plaintiff No. 2 and the wife of Plaintiff No. 1 and son of Plaintiff No.1 who are sought to be joined as parties to the suit.

40. A perusal of the said application dated 26th March, 2021, indicates that the Respondents No. 2 and 3 have stated on oath that Plaintiff No. 1 died on 29th December 2017 leaving behind the two of them as the only heirs and legal representatives of Plaintiff No. 1 annexing a copy of the death certificate of Plaintiff No. 1 issued by the Municipal Corporation of Greater Mumbai 'D' Ward.

41. The expression legal representative has been defined in Section 2 (11) of the Code and is very wide and covers a person who in law represents the estate of the deceased or a person who intermeddles with the estate of the deceased or where a party sues or is sued in a representative character, or the person on whom the estate devolves on the death of the party so suing or sued.

42. The following paragraph from the decision in the case of **Mohinder Kaur V/s. Piara Singh**, AIR 1981 P & H 130 (FB) is relevant and is quoted as under:

“In essence a decision under Order 22, Rule 5, Civil Procedure Code, is only directed to answer an orderly conduct of the proceedings with a view to avoid the delay in the final decision of the suit till the persons claiming to be the representatives of the deceased party get the question of succession settled through a different suit and such a decision does not put an end to the litigation in that regard. It also does not determine any of the issues in controversy in the suit. Besides this it is obvious that such a proceeding is of a very summary nature against the result of which no appeal is provided for. The grant of an opportunity to lead some sort of evidence in support of the claim of being a legal representative of the deceased party would not in any manner change the nature of the proceedings.”

43. The decision is limited for the purpose of proceeding with the suit and has no effect of conferring any right over the property. The proper course to follow in such cases is to bring all the legal representatives on record so that they vouchsafe the estate of the deceased for ultimate benefit of the real legal representative.

44. From the order dated 30th August 2021, it is observed that the said order has been passed after perusing the application made on behalf of Respondents No. 2 and 3 as well as the say of petitioner

and after hearing the advocates of both the sides and after perusing the record in the matter, the learned trial judge has given finding that from the verification clause of the application it appears that Respondent No. 2 is the widow of the deceased Plaintiff No.1 and Respondent No.3 is the son of the deceased Plaintiff No.1 and considering the relationship between the deceased Plaintiff No.1 and the Respondents No.2 and 3, it appears that the proposed Plaintiffs are entitled to the benefits of the result of the suit. Also in the written submissions filed on behalf of these Respondents, the respective Aadhaar cards have been annexed which indicate their relationship respectively as wife and son of the deceased Plaintiff No.1. The Petitioner has not disputed this finding nor furnished any material to the contrary except a bald statement/argument that the application on behalf of Respondents No. 2 and 3 does not disclose the relationship of the deceased with the proposed Plaintiffs. Therefore, in my view, the trial court has correctly decided the question of the Respondents No. 2 and 3 being the legal heirs.

45. The learned trial judge has observed in the said order that the Applicants have not presented the application within the time of limitation. Nevertheless, considering that Respondents No. 2 and 3

being heirs of the deceased Plaintiff No.1, and that the matter was not settled in mediation, the learned trial judge has held this to be sufficient reason to condone the delay caused in filing the application and set aside the abatement of the suit with respect to Plaintiff No.1. In my view, there is no fault in his reasoning. In the facts of this case, Respondents No. 2 and 3 have made out a case of sufficient cause for the delay which has been rightly condoned by the learned trial judge.

46. Learned trial judge while recording in his order that the abatement of the suit is not on record has set aside the deemed order of abatement of suit. It is settled law that once abatement takes place the same is automatic by operation of law provided the same is set aside by an order of the Court upon filing of an application within time or by making out sufficient cause for condonation of delay if made beyond the time prescribed. The right to sue has survived in favour of the Respondents No. 2 and 3, however it is an admitted position that no application has been made within the time prescribed for either bringing Respondent Nos. 2 and 3 on record nor for setting aside the abatement deemed to have taken place with respect to the deceased Plaintiff No.1

under Order 22, Rule 3(2). The application for joining Respondents No. 2 and 3 as parties to the suit was first made on 04th August, 2019 by Respondent No.1 (Original Plaintiff No.2) and then as the ld. Trial Judge did not decide the same on merits holding it to be not in proper form, an application was made on behalf of Respondents No.2 and 3 on 26th March, 2021.

47. Plaintiff No.1 was one of the co-owners of the suit property. From paragraph 2 of the said application dated March 26, 2021, though not happily worded, it is observed that because the matter was referred to mediation and which could not be settled, Respondents No. 2 and 3 being the legal heirs would be entitled to the benefit of the result of the suit. It is therefore not relevant, whether Respondents No.2 and 3 were parties to the mediation or not but being the heirs to Plaintiff No.1, naturally they would be interested in the outcome of the said mediation. It is only when the mediation failed and the suit had to be prosecuted further that it was thought fit to make them parties to the said litigation. In my view there is nothing wrong in this approach because if the matter would have been settled by mediation, the necessity of filing such applications would have been obviated.

48. It is also observed from paragraph 2 of the said application dated 26th March, 2021 that there is a prayer to condone the delay in taking out the said application although the same has not found place in paragraph 4 which is the prayer clause, where the request to join Respondents No. 2 and 3 as parties to the suit has been made, but this is a mere technicality and should not come in the way of a court deciding applications of this nature. Therefore, it cannot be said that there is no prayer for condonation of delay.

49. In the case of **Ram Nath Sao Alias Ram Nath Sahu and Others V/s. Gobardhan Sao and Others [(2002) 3 SCC 195]**, the Hon'ble Supreme Court observed that the expression "sufficient cause" under Order 22, Rule 9 should receive a liberal construction so as to advance substantial justice. Paragraph 12 of the said decision is usefully quoted as under:

"12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon

facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in overjubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis termines, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.”

50. Therefore even if the application for joining the legal heirs as in this case is not happily worded, in order to render substantial justice, a liberal and meaningful construction and interpretation

has to be given to the averments in the application.

51. In the facts of this case, Respondents No. 2 and 3 have made out a case of sufficient cause for the delay which has been rightly condoned by the learned trial judge.

52. It has been contended by the Petitioner that in view of rejection of earlier application at Exh.18 vide order dated 17th March, 2021, that subsequent Application for the same relief would not be maintained. A bare perusal of the said order clearly indicates that the said application was rejected without going into the merits as being not in proper form i.e. not having been signed and verified by the legal representatives of the deceased Plaintiff No.1 and an application duly signed and verified by them would need to be filed. The advocate of the Respondents had also agreed to make such an application separately which would be decided on merits. The application dated 26th March, 2021 therefore came to be filed on behalf of Respondents No.2 and 3 being the legal heirs of the Plaintiff No.1. Therefore this contention is baseless.

53. With respect to the reliance of Petitioner on the decisions in

the case of **Brijesh Kumar & Ors. (supra)** and **Balwant Singh V/s. Jagdish Singh (supra)**, these decisions lay down the foundational principles. However, the said decisions cannot be said to be of any assistance to the case of Petitioner as in the facts and circumstances of this case it has been observed that there is sufficient cause made out for condoning the delay. As also observed, the provisions for condonation of delay are required to be construed liberally to achieve substantial justice.

54. In fact, the decision in the case of **Balwant Singh V/s. Jagdish Singh (supra)** in my view advances the case of the Respondents rather than Petitioner. Paragraphs 15 to 27, 32 to 35 and 38 are relevant and are quoted as under :

15. Rule 1 of Order 22, CPC mandates that the death of a defendant or a plaintiff shall not cause the suit to abate if the right to sue survives. In other words, in the event of death of a party, where the right to sue does not survive, the suit shall abate and come to an end. In the event the right to sue survives, the concerned party is expected to take steps in accordance with provisions of this Order. Order 22 Rule 3, CPC therefore, prescribes that where the plaintiff dies and the right to sue has survived, then an application could be filed to bring the legal representatives of the deceased plaintiff/

appellant on record within the time specified (90 days).

16. Once the proceedings have abated, the suit essentially has to come to an end, except when the abatement is set aside and the legal representatives are ordered to be brought on record by the Court of Competent jurisdiction in terms of Order 22 Rule 9 (3), CPC. Order 22 Rule 9 (3) of the CPC contemplates that provisions of Section 5 of the Indian Limitation Act, 1963 shall apply to an application filed under Sub Rule 2 of Rule 9 of Order 22, CPC. In other words, an application for setting aside the abatement has to be treated at par and the principles enunciated for condonation of delay under Section 5 of the Limitation Act are to apply para materia.

17. Section 3 of the Limitation Act requires that suits or proceedings instituted after the prescribed period of limitation shall be dismissed. However, in terms of Section 5, the discretion is vested in the Court to admit an appeal or an application, after the expiry of the prescribed period of limitation, if the appellant shows "sufficient cause" for not preferring the application within the prescribed time. The expression "sufficient cause" commonly appears in the provisions of Order 22 Rule 9 (2) CPC and Section 5 of the Limitation Act, thus categorically demonstrating that they are to be decided on similar grounds. The decision of such an application has to be guided by similar precepts. It will be appropriate for us to trace the law enunciated by this Court while referring, both the provisions of Order 22 Rule 9, CPC and Section 5 of the Limitation Act.

18. In Union of India v. Ram Charan, a three-Judge Bench of this Court was concerned with an application filed under Order 22 Rule 9 CPC for bringing the legal representatives of the deceased on record beyond the prescribed period of limitation. The Court expressed the view that mere allegations about belated knowledge of death of the opposite party would not be sufficient. The Court applied the principle of "reasonable time" even to such situations. While stating that the Court was not to invoke its inherent powers under Section 151 CPC it expressed the view that the provisions of Order 22 Rule 9 CPC should be applied. The Court held as under: (Ram Charan case, AIR pp. 219-20, paras 8, 10 & 12)

"8. There is no question of construing the expression 'sufficient cause' liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack

of vigilance. This, however, does not mean that the Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement.

*10....The procedure requires an application for the making of the legal representatives of the deceased plaintiff or defendant a party to the suit. It does not say who is to present the application. Ordinarily it would be the plaintiff as by the abatement of the suit the defendant stands to gain. However, an application is necessary to be made for the purpose. If no such application is made within the time allowed by law, the suit abates so far as the deceased plaintiff is concerned or as against the deceased defendant. The effect of such an abatement on the suit of the surviving plaintiffs or the suit against the surviving defendants depends on other considerations as held by this Court in *State of Punjab v. Nathu Ram and Jhanda Singh v. Gurmukh Singh*. Any way, that question does not arise in this case as the sole respondent had died.*

12....The legislature further seems to have taken into account that there may be cases where the plaintiff may not know of the death of the defendant as ordinarily expected and, therefore, not only provided a further period of two months under Art. 171 for an application to set aside the abatement of the suit, but also made the provisions of Section 5 of the Limitation Act

applicable to such applications. Thus the plaintiff is allowed sufficient time to make an application to set aside the abatement which, if exceeding five months, be considered justified by the Court in the proved circumstances of the case. It would be futile to lay down precisely as to what considerations would constitute "sufficient cause" for setting aside the abatement or for the plaintiffs not applying to bring the legal representatives of the deceased defendant on the record or would be held to be sufficient cause for not making an application to set aside the abatement within the time prescribed. But it can be said that the delay in the making of such applications should not be for reasons which indicate the plaintiffs negligence in not taking certain steps which he could have and should have taken. What would be such necessary steps would again depend on the circumstances of a particular case and each case will have to be decided by the court on the facts and circumstances of the case. Any statement of illustrative circumstances or facts can tend to be a curb on the free exercise of its mind by the Court in determining whether the facts and circumstances of a particular case amount to "sufficient cause" or not. Courts have to use their discretion in the matter soundly in the interests of justice."

20. *In Mithailal Dalsangar Singh, a Bench of this Court had occasion to deal with the provisions of Order 22 Rule 9 CPC and while enunciating the principles controlling the application of and exercising of discretion under these provisions, the Court reiterated the principle that the*

abatement is automatic and not even a specific order is required to be passed by the Court in that behalf. It would be useful to reproduce paragraph 8 of the said judgment which has a bearing on the matter in controversy before us: (SCC p. 696)

“8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being

actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.”

21. *Another Bench of this Court in a recent judgment of Katari Suryanarayana v. Koppiseti Subba Rao, [AIR 2009 SC 2907] again had an occasion to construe the ambit, scope and application of the expression “sufficient cause”. The application for setting aside the abatement and bringing the legal heirs of the deceased on record was filed in that case after a considerable delay. The explanation rendered regarding the delay of 2381 days in filing the application for condonation of delay and 2601 days in bringing the legal representatives on record was not found to be satisfactory. Declining the application for condonation of delay, the Court, while discussing the case of Perumon Bhagvathy Devaswom v. Bhargavi Amma [(2008) 8 SCC 321] in its para 13 held as under: (SCC pp. 329-30)*

“(i) The words “sufficient cause for not making the application within the period of limitation” should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words ‘sufficient cause’ in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.”

22. *The Learned Counsel appearing for the applicant, while relying upon the cases of Ram*

Sumiran, Mithailal Dalsangar Singh and Ganeshprasad Badrinarayan Lahoti, contended that the Court should adopt a very liberal approach and the delay should be condoned on the mere asking by the applicant. Firstly, none of these cases is of much help to the applicant. Secondly, in the case of Ram Sumiran the Court has not recorded any reasons or enunciated any principle of law for exercising the discretion. The Court, being satisfied with the facts averred in the application and particularly giving benefit to the applicant on account of illiteracy and ignorance, condoned the delay of six years in filing the application. This judgment cannot be treated as a precedent in the eye of the law. In fact, it was a judgment on its own facts.

24. *As held by this Court in Mithailal Dalsangar Singh : (SCC p. 696, para 8)*

“8. ... the abatement results in the denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally.”

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 concerned party. 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 reflect 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. There can be instances where the court should condone the delay; equally there would be cases where the court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect "sufficient cause" as understood in law. (Advanced Law Lexicon, P.Ramanatha Aiyar, 2nd Edn., 1997)

35. *The expression "sufficient cause" implies the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.*

38. *Above are the principles which should control the exercise of judicial discretion vested in the court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of*

the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger Benches as well as equi-Benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the court would be inclined to condone the delay in the filing of such applications.”

55. The above principles regulate the exercise of judicial discretion and as stated in paragraph 38 of the said decision, delay is just one of the ingredients which has to be considered by the Court. In addition, the Court must also take into account the conduct of the parties, bonafide reasons for condonation of delay and whether such delay could easily be avoided by the applicants acting with normal care and caution. I am of the view that Respondents acted bonafide inasmuch as after the settlement talks

and the mediation with respect to the litigation, failed, application to bring them on record came to be filed.

56. With respect to the argument on behalf of Petitioner that the application dated 26th March, 2021 at Exhibit 22 is not under the provisions of Order 22 but the same is filed under the provisions of Order 1 Rule 10 of the CPC and therefore not maintainable, it is submitted on behalf of the Respondents that on a plain reading of the said application, it is specifically pleaded that the deceased Plaintiff No.1 died on 29th December, 2017 leaving behind the proposed Plaintiffs as the only heirs. It is also submitted that after making out a case of sufficient cause explaining the delay in paragraph 2, it was prayed that the proposed Plaintiffs be added as party to the suit. It is submitted that therefore the said application is an application under Order 22 and not under Order 1 Rule 10 as sought to be contended. It is further submitted that it is settled position of law that even if an application under Order 1 Rule 10 is filed, it will be unjust to non-suit the legal representatives on the ground of technicalities and in such circumstances, an application under Order 1 Rule 10 has to be treated as an application under

Order 22 Rule 3 and be allowed. In support of his submission learned Counsel for the Respondents relies upon the decision of the Supreme Court in the case of **Banwari Lal (Dead) By Legal Representatives and Another V/s. Balbir Singh** [2016 (1) SCC 607].

57. The Hon'ble Supreme Court in the decision of **Banwari Lal (supra)** has observed that it would be unjust to non suit the Appellants on the ground of technicalities. In the said case, no steps were taken to bring on record the legal representatives of late Banwari Lal either in the First Appeal or in the Second Appeal. The Appellants viz., the legal representatives of Banwari Lal filed a Civil Miscellaneous Application under Order 1 Rule 10 of the CPC with Section 151 of the CPC to implead the legal representatives. It was submitted that Order 22 of the CPC stipulates the manner in which, legal representatives of the Plaintiffs or defendants ought to be brought on record and the prescribed procedure cannot be circumvented by filing an application under Order 1 Rule 10 read with Section 151 of the CPC. The Hon'ble Supreme Court in paragraph 9 observed that provisions of Order 22 CPC are not penal in nature and that it is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing

strict adherence to the procedural aspects of law. The Hon'ble Supreme Court therein has quoted paragraph 26 of the decision of Five Judge Bench of the Supreme Court in the case of **Sardar Amarjit Singh Kalra V/s. Pramod Gupta [(2003) 3 SCC 272]** which is quoted as under:

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any substantial justice claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the

jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice..."

58. In paragraph 10, the Hon'ble Supreme Court referred to the decision of the Supreme Court in the case of **Sital Prasad Saxena (Dead) By Lrs V/s. Union Of India And Others [(1985) 1 SCC 163]** where it was observed that rules of procedure under Order 22 of the CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, the Hon'ble Supreme Court observed in paragraph

10 that the delay in bringing the legal representatives of the deceased party on record should be condoned. That procedure is made only to facilitate administration of justice and not to defeat the same. The Hon'ble Supreme Court dismissed the order of the Hon'ble High Court and allowed the applications for bringing on record legal representatives of the Appellant by treating application filed under Order 1 Rule 10 of CPC as an application under Order 22 Rule 3 of the CPC.

59. In the case at hand therefore, although it is submitted by Counsel for the Respondents that application dated 26th March, 2021 is not an application under Order 1 Rule 10, but an application under Order 22, in my view, respectfully following the decision of the Hon'ble Supreme Court in the case of **Banwari Lal (supra)**, I am of the view that whether the application is considered to be under Order 22 Rule 3 or under Order 1 Rule 10 would not really make any difference keeping in mind the objective that substantial justice should not be defeated on the ground of mere technicalities.

60. Learned Counsel for Petitioner has also submitted that Respondents No. 2 and 3 have made a false statement on oath in

their application dated 26th March, 2021 in the sense that despite the 3rd Respondent's (Original Plaintiff No. 2) application for bringing legal heirs of deceased Plaintiff No.1 on record being decided on 17th March, 2021, in paragraph 3 of the application dated 26th March, 2021, it has been stated that the earlier application of Plaintiff No.2 is pending. In my view, such a statement cannot be said to have a bearing on the substantial nature of the application. Moreover, it is further stated in the said paragraph that upon the death of Plaintiff No.1, Respondents No.2 and 3 were entitled to continue the suit but were under the impression that Plaintiff No.2's application is already on record and therefore they have not made an application in the suit. In my considered view, this is also a fair and reasonable explanation to what the delay caused in filing the subject application.

61. In view of the above discussion, I am of the view that there is no jurisdictional error on the part of the learned trial judge nor any illegality or perversity in the impugned order dated 30th August 2021 passed by the Small Causes Court at Mumbai below Exhibit 22 in R.A.E. Suit No. 547 of 2015 in allowing the application dated 26th March 2021 on behalf of Respondents No. 2 and 3 herein. The

impugned order is an interlocutory order and entertaining the prayers of Petitioner would not further the cause of substantial justice. The learned trial judge has fairly allowed the application for adding Respondents No. 2 and 3 as plaintiffs in the said suit and no case is made out for interference with the said order. Needless to observe that if the trial court gives a decision which is adverse to the interests of Petitioner, Petitioner can always agitate the same in appropriate proceedings.

62. The Writ Petition is dismissed with no order as to costs. It is made clear that this Court has not given any finding on the facts/merits of the said suit. The reasons given herein are only for the purposes of deciding the present Petition. All contentions/issues on the merits of the suit are left open to be decided at the trial of the suit, which the trial court shall decide on its own merits in accordance with law. All the interim orders stand vacated. All concerned are directed to comply with the directions contained in the order dated 30th August 2021 of the Small Causes Court, Mumbai in Suit No. 547 of 2015 by 30th June, 2022 and the trial to

proceed expeditiously thereafter as per the timetable of the learned trial court.

(ABHAY AHUJA, J.)

After this judgment is pronounced, learned Counsel for Petitioner requests for a stay of this judgment. The request is rejected.

(ABHAY AHUJA, J.)