

#S-4

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 21.03.2023

FAO(OS) 17/2023

FAIZ MURTAZA ALI (DECEASED) THROUGH LRS

..... Appellant

versus

HARISH REDDY (DECEASED) THROUGH LRS AND ORS

..... Respondents

Advocates who appeared in this case:

For the appellant : Mr. K.B. Upadhyay, Ms. Pinki Tiwari & Mr. S.N. Tripathi, Advocates.
For the respondents : Mr. Rajiv Shankar Dwivedi & Mr. Shailesh Tiwari, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

CAV 84/2023

Mr. Shailesh Tiwari, learned counsel appears on behalf of the respondent No. 1/caveator.

The caveat stands discharged.

CM APPL. 6622/2023 (Exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of accordingly.

FAO(OS) 17/2023

1. The present appeal under Section 10 of the Delhi High Court Act, 1966 and Section 104, read with Order XLIII Rule 1(k) and Section 151 of the Code of Civil Procedure, 1908, has been instituted on behalf of the appellants, praying as follows:

'In the premises, the petitioners most respectfully pray that your Lordships may be pleased to:

a) Allow the present appeal and set aside/quash the Impugned Order dated 09.01.2023 passed by the Hon'ble Single Judge of this Hon'ble Court in LA. No. 6311/2014 in CS (OS) No. 1126 of 2011 and grant the relief prayed for in the appeal of the appellants; and

b) Restore the suit/CS (OS) No. 1126 of 2011 to its Original number bringing the Legal Heirs of the Original Plaintiff on record; and

c) Pass such other orders(s) as may be deemed just and proper to meet the ends of justice.'

2. In sum and substance, the facts and circumstances of the present appeal are that subsequent upon the demise of Mr. Faiz Murtaza, the original plaintiff in **CS (OS) No. 1126/2011**, two of his Legal Representatives filed an application under the provision of Order XXII Rule 3 of the Code of Civil Procedure, 1908, being **I.A. No. 17076/2013** seeking their substitution as parties, in place of their late predecessor and to prosecute the suit further. It is an admitted position that the said application was filed within time.

3. Unfortunately, on account of non-appearance on behalf of the parties in the aforestated application, the same came to be dismissed in default, by the Joint Registrar (Judicial) on 25.10.2013.

4. The appellants before us did not challenge the above-said order dated 25.10.2013, which was dismissed in default, by filing a Chamber Appeal as provided for, under **Chapter II, Rule 5** of the Delhi High Court (Original Side) Rules 2018, which reads as under:

"5. Appeal against the Registrar's orders.-Any person aggrieved by any order made by the Registrar, under Rule 3 of this Chapter, may, within fifteen days of such order, appeal against the same to the Judge in Chambers. The appeal shall be in the form of a petition bearing court fees of Rs.2. 65. "

5. In view of the dismissal of the appellants' application under Order XXII Rule 3, being **I.A. No. 17076/2013**, in default and for non-prosecution the learned Single Judge dismissed the suit, as abated, on 03.03.2014, on the solitary ground that the application for substitution of Legal Representatives had already been dismissed, in default as aforestated.

6. Aggrieved thereby, the appellants filed two applications, being **I.A. No. 6311/2014**, under Order XXII Rule 9 for setting aside the said abatement order dated 03.03.2014 and to restore the suit to its original number; and **I.A. No. 10555/2014** under Order IX Rule 3, for

setting aside the order dated 25.10.2013, rendered by the Joint Registrar (Judicial) dismissing I.A. No. 17076/2013 (under Order XXII Rule 3, Code of Civil Procedure, 1908) in CS(OS) 1126/2011.

7. In this backdrop, the learned Single Judge has dismissed the application being **I.A. No. 6311/2014**, on the ground that, not only have the appellants failed to establish that they were prevented by sufficient cause from continuing the suit but have also failed to challenge the order dated 25.10.2013 by way of a Chamber Appeal under the provision of **Chapter II, Rule 5** of the Delhi High Court (Original Side) Rules 2018, passed by the Joint Registrar (Judicial), dismissing their application under Order XXII Rule 3.

8. Having heard learned counsel appearing on behalf of the parties, and perused the relevant provisions; and in view of the observation by the venerated Justice V. R. Krishna Iyer in **S.B. Noronah Vs. Prem Kumari Khanna**, reported as (1980) 1 SCC 52 to the effect that, “*Parties win or lose on substantial questions, not ‘technical tortures’ and courts cannot be ‘abettors’*”; and further in the interest of justice, we allow the present appeal. The prayers sought for, in the present appeal, are allowed. The impugned order dated 09.01.2023 is set aside, and the suit is restored to its original number.

9. It is, however, pertinent to say that the above order is, subject to

payment of Rs. 50,000 (Rupees Fifty Thousand Only), *forthwith*, in equal shares to the respondents herein, (original defendants in the subject suit), or their Legal Representatives, as the case may be, within one week from today.

10. No further relief is prayed for.

11. With the above directions, the appeal is allowed; and disposed of accordingly.

12. In view of the long passage of time, since the suit being **CS(OS) 1126/2011**, came to be dismissed as abated; we request the learned Single Judge to expedite further proceedings from the stage of framing of issues, in the subject suit, in accordance with law.

13. Copy of the Judgment be uploaded on the website of the Court.

SIDDHARTH MRIDUL
(JUDGE)

TALWANT SINGH
(JUDGE)

MARCH 21, 2023

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[Click here to check corrigendum, if any](#)