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

% *Decided on: 26<sup>th</sup> April, 2023*

+ RFA 625/2007 with CM APPLs. 52605/2018, 52606/2018, 3365/2019, 9511/2020, 9512/2020

SARTAJ SINGH ..... Appellant  
Through: Ms. Aditi Shastri, Advocate  
versus

S.JAGJIT SINGH & ORS ..... Respondents  
Through: Mr. Ramesh Kumar, Advocate  
for R-6 (M:9810159436)

**CORAM:**  
**HON'BLE MS. JUSTICE MINI PUSHKARNA**  
[Physical Hearing/ Hybrid Hearing]

**MINI PUSHKARNA, J. (ORAL):**

**CM APPLs. 52605/2018, 52606/2018, 3365/2019, 9511/2020 & 9512/2020**

1. The aforesaid applications have been filed on behalf of applicant, being the son of deceased appellant praying for bringing the Legal Representatives (LRs) of deceased appellant on record with further prayer for setting aside the abatement of appeal and for bringing on record the LR's of the deceased respondent no. 1 and 3(ii).
2. CM No. 52605/2018 is an application for bringing on record the LR's of the deceased appellant.
3. CM No. 52606/2018 is an application for setting aside the abatement of appeal and for condoning the delay in filing the application for bringing on record the LR's of the deceased appellant.

4. CM No. 3365/2019 is an application for bringing on record the LR's of the deceased respondent no. 1 and 3 (ii).
5. CM No. 9511/2020 is an application for condoning delay in filing the application for bringing on record the LR's of the deceased respondents and for setting aside the abatement on that account.
6. CM No. 9512/2020 is an application for taking on record the amended memo of parties.
7. The applications have been filed on behalf of one applicant only, i.e. son of the deceased appellant. When it was brought to the notice of the counsel that the applications were not supported by affidavits of other LR's of the deceased appellant, requisite affidavits of other LR's have been filed subsequently at the time of final arguments of the present applications.
8. It is submitted that the appeal was filed by the deceased appellant through Sh. S.K. Pruthi, Advocate who was looking after the case. Unfortunately, the appellant died on 27.02.2017 and LR's had no knowledge about the filing of the said appeal. It is the case of the applicant that all the papers of the present appeal were in possession of Sh. S.K. Pruthi, Advocate but unfortunately Sh. S.K. Pruthi, Advocate had also died in April, 2011.
9. It is submitted that the applicant was not aware about the filing of the said appeal and also about the death of Sh. S.K. Pruthi, Advocate until 27.10.2018, when the applicant received a telephonic message from the daughter of the said Sh. S.K. Pruthi, Advocate, namely Ms. Nidhi Pruthi. She informed the applicant that the file pertaining to the appeal was lying in the office of late Sh. S.K. Pruthi,

Advocate. Thus, the applicant contacted daughter of the deceased Advocate on 28.10.2018 and daughter of the said Advocate handed over the case file to the applicant.

10. It is submitted that the daughter of late counsel, who is also an Advocate, further told that the applicant that he should engage a counsel who is dealing in High court matters. Consequently, the applicant after taking the said file from the daughter of the late Advocate, contacted the present counsel who informed him that the appeal had already abated due to non-filing of the application for bringing on record the LRs of appellant. Steps were taken thereafter to file the present applications. Thus, it is submitted that non-filing of the application for bringing on record the LRs of deceased appellant within time, is neither intentional nor deliberate. It is prayed that the abatement of appeal may be set aside and delay in filing the application for bringing on record the LRs of the deceased appellant, may be condoned.

11. It is submitted that the applicant was advised by the present counsel to confirm whether all the respondents were alive. Thereafter, on 31.10.2018, the applicant contacted respondent no. 2(ii), who informed him that respondent no. 1 had died on 03.01.2015. The said respondent no. 2(ii) also informed the applicant that respondent no. 3(ii) had died. When the applicant contacted the son of the deceased respondent, he came to know that respondent no. 3(ii) had died on 20.06.2007. Thus, applications have been filed to bring on record the LRs of the deceased respondent no. 1 and 3(ii), with prayer for condoning the delay in filing the application for bringing on record the

LRs of the deceased respondent.

12. In support of his submissions, following judgments have been relied upon on behalf of the applicant:

***I. Siravarapu Appa Rao & Ors. Vs. Dokala Appa Rao, 2022(8) SLT 456***

***II. Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRs and Others, (2008) 8 SCC 321***

13. On the other hand, on behalf of the respondents, the present applications have been opposed vehemently. It is submitted that the applications have been filed at a belated stage. The applicant has not shown any justified reasons for delay in moving the present applications.

14. It is submitted that it is difficult to believe that when counsel for the deceased appellant had expired in April, 2011, the family of the deceased appellant could not get information from April, 2011 till 27.10.2018 about the pendency of the present appeals. The applicant has created a false story to file the applications in order to get relief on the basis of flimsy grounds. It is submitted that the daughter of the deceased counsel has been in the profession since the year 2003 and she is also maintaining her office. Hence, it is difficult to believe that from April, 2011 till 27.10.2018, she might be holding the file without informing the family of the deceased appellant about the same.

15. It is further submitted that the present applications have been filed on the basis of false and concocted facts by stating that applicant had no knowledge about filing of any appeal by his deceased father, whereas, it is matter of record that the deceased appellant had expired

at the age of more than 80 years and every time he was accompanied by one of his sons or any other family member for the court proceedings. Hence, the ground taken by the applicant in the applications is self contradictory.

16. It is, thus, submitted that there is no explanation for delay in filing the respective applications for bringing on record the LRs of the deceased appellant and LRs of the deceased respondents. It is prayed that the applications be dismissed, as the appeal already stands abated.

17. On behalf of the respondents, the following judgments have been relied upon:

- i. ***Badni (dead) by LRs. & Ors., etc. etc. Vs. Siri Chand (dead) by LRs. & Ors., etc., AIR 1999 SUPREME COURT 1077***
- ii. ***Jai Ram (Deceased) Son Of Attra Vs. Jagat Ram Alias Mangat Ram, AIR 1991 PUNJAB & HARYANA 203***
- iii. ***PADMARAM Vs. SURJA, AIR 1961 RAJASTHAN 72 (V 48 C 26)***
- iv. ***SHIVRAJSINGH Vs. GAURISHANKAR BALDEO PRASAD, AIR 1961 MADHYA PRADESH 147 (V 48 C 51)***
- v. ***Balwant Singh Vs. Jagdish Singh & Others, AIR 2010 SUPREME COURT 3043***

18. I have heard learned counsels for the parties and have perused the record.

19. Order XXII Rule 3 of Code of Civil Procedure, 1908 (CPC) provides categorically that in case no application is made for bringing the legal representatives of the deceased plaintiff/appellant on record, the suit/appeal shall abate. Similarly Order XXII Rule 4 CPC provides

that where within the time as provided by law, no application is made for bringing on record the legal representatives of the deceased defendant/respondent, the suit/appeal shall abate as against the said defendant/respondent. Further, Order XXII Rule 9 CPC provides that if it is proved that the legal representatives of the deceased plaintiff/appellant were prevented by any 'sufficient cause' for continuing the suit/appeal, the court shall set aside the abatement. Thus, the applicant in the present case was required to file the requisite applications for bringing on record the legal heirs of deceased appellant as well as the deceased respondents within 90 days from the date of death of the party, unless 'sufficient cause' is shown for condoning the delay in taking steps for bringing on record the legal heirs of the deceased appellant/respondent.

20. In the present case, the appellant passed away on 27.02.2017. The application for bringing on record the LR's of the deceased appellant was filed only on 12.12.2018. The reasons for delay as given are that the LR's were not aware of the pendency of the present appeal. It is hard to believe that the family members of the deceased appellant were not aware of the pendency of the present appeal. It is a matter of fact that the deceased appellant had been pursuing the legal proceedings since the year 1985, when suit was filed by him against the respondents herein. The appellant had adduced evidence on his behalf and had filed the present appeal in the year 2007 against the impugned judgment and decree dated 31.10.2007 passed by the learned Trial Court. The address as given by the deceased appellant in his affidavit filed along with the present appeal is the same as given

on behalf of the applicant in the affidavits accompanying the present applications. It is not the case of the applicant, who is son of the deceased appellant, that he was staying separately from his father or was not in talking terms with his father so as not to know about the pendency of the litigation as initiated by his father. Thus, no plausible or justified reasons have been given on behalf of the applicant for condoning delay in filing the applications for bringing on record the LRs of the deceased appellant or for setting aside the abatement of the appeal.

21. It is also to be noted that respondent no. 1 had expired on 03.01.2015. Respondent no. 3(ii) had expired on 20.06.2007. However, application for bringing on record the LRs of the said deceased respondents was filed only on 22.12.2018, though it is dated 12.11.2018. The appeal had already abated on account of death of these two respondents and no application was filed in between under Order 22 Rule 9 CPC for setting aside the abatement.

22. The applicant filed application under Order 22 Rule 9 CPC seeking setting aside of abatement of appeal on account of death of the appellant and respondent no. 1 and 3 (ii) only on 05.02.2020. The reasons cited for belated filing was again that the applicant was not aware of the pendency of the present appeal, which explanation has already been rejected by this Court as not being credible.

23. It is also a matter of fact that both the above respondents had died when appellant was still alive. However, no reason has been cited as to what prevented the appellant from making any application for bringing on record the LRs of the said deceased respondents, during

his lifetime. It has not been pleaded that the deceased appellant was not aware of the death of the deceased respondents. When no explanation has come forward about the deceased appellant for not filing the application for bringing on record the LRs of deceased respondents from the period 20.06.2007, when respondent no. 3(ii) died till 27.02.2017, when the appellant died, the explanation given by the applicant for himself cannot be entertained. This is especially so in the facts and circumstances of the present case, as the parties are members of the same family and the dispute being essentially in the nature of proceedings for possession and partition.

24. It is clear from the aforesaid narrative that the applicant has been totally callous and negligent in pursuing the present appeal. The explanations, as sought to be given by the applicant for delay in filing the applications, are not plausible. The appeal has already abated and the applicant has not been able to show any sufficient cause for setting aside the abatement. Upon abatement of appeal, a right has accrued in favour of the respondents, which cannot be taken away on such flimsy grounds, as sought to be raised in the present case.

25. Hon'ble Supreme Court in the case of **Balwant Singh (dead) Vs. Jagdish Singh & Ors.**, reported as (2010) 8 SCC 685 has held as follows:

*18. In Union of India v. Ram Charan [AIR 1964 SC 215] 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 1964 SC 215] , 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 overstrict 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 scrutinise 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.*

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*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 [AIR 1962 SC 89] and Jhanda Singh v. Gurmukh Singh [Civil Appeal No. 344 of 1956 decided on 10-4-1962 (SC)] . Any way, that question does not arise in this case as the sole respondent had died.*

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*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 Article 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 plaintiff's 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 plaintiff's 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."*

26. No sufficient cause has been shown by the applicant for condoning the delay in filing the present applications. The law is very clear that in case no application is made by the party concerned to whom the right to sue survives after demise of the appellant or for substitution of a party within 90 days of the death of such party, such appeal shall abate automatically on the expiry of the 90 days from the death of such party. Unless a party is able to show 'sufficient cause' for delay in taking the appropriate steps for substituting the LRs of the deceased appellant or for bringing on record the LRs of deceased respondents, the appeal shall stand abated.

27. Supreme Court in the case of **Balwant Singh (Dead) Vs. Jagdish Singh (Supra)** while dealing with the aspect of law of limitation, has held that if a party has been negligent in implementing its rights and remedies, then delay cannot be condoned in such circumstances on the mere asking of the applicant. Thus, it has been held as follows:

*"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.”*

28. There is another aspect of the matter. Once appeal has abated qua respondent No.1 and 3(ii), it shall abate with respect to other respondents also. It has been held time and again that in case there is a possibility that the court may pass a decree contradictory to the decree in favour of the deceased party, the appeal would abate in toto. It has been held that the appeal is continuity of the suit and law does not permit two contradictory decrees on the same subject matter of the suit. In the present case, all parties being family members and the case being pertaining to partition and possession, the interests of all the parties are intertwined. Thus, if suit is allowed to continue against other respondents, the same may lead to contradictory decrees qua the deceased respondents and surviving respondents.

29. Thus, in the case of ***Budh Ram and Others Vs. Bansi and Others, (2010) 11 SCC 476***, Supreme Court has held as follows:

*“13. In Sri Chand v. Jagdish Pershad Kishan Chand [AIR 1966 SC 1427] this Court held that in case one of the respondents dies and the application for substitution of his heirs or legal representatives is not filed within the*

*limitation prescribed by law, the appeal may abate as a whole in certain circumstances and one of them could be that when the success of the appeal may lead to the courts coming to a decision which may be in conflict with the decision between the appellant and the deceased respondent and, therefore, it will lead to the court passing a decree which may be contradictory and inconsistent to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent in the same case.”*

30. In view of the aforesaid detailed discussion, it is held that the applicant has not been able to give any reasonable or satisfactory explanation for delay in filing the applications for substitution of legal heirs of the deceased appellant or for bringing on record the legal heirs of the deceased respondents. Thus, the present applications are dismissed.

**RFA 625/2007**

31. In view of the dismissal of the aforesaid applications, the appeal stands abated. The appeal is accordingly dismissed as abated, along with all the pending applications.

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**MINI PUSHKARNA, J**

**APRIL 26<sup>th</sup>, 2023**

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