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

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Judgment reserved on: January 10, 2024
Judgment pronounced on: March 01, 2024

+ CM(M) 28/2023, CM APPL. 995/2023 (stay)

RAMESH CHAND SHARMA THROUGH LR Petitioner
Through: Mr. Gurvinder Singh, Adv.

versus

BALBIR SINGH MATHUR & ORS. Respondents
Through: Mr. Azeem A. Dost, Adv. for R-3.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India, 1950 by the petitioner seeking to set aside the impugned order dated 06.08.2022 passed by the court of Learned Additional District Judge -04 (South-East), Saket District Courts, New Delhi (hereinafter referred as "Trial Court") in Civil Suit No. CS DJ 7531/2016, titled as "*Balbir Singh Mathur &Anr. Vs. Ramesh Chand Sharma &Anr*" whereby the Learned Trial Court, allowed the application under Order XXII Rule 4 &10A read with Section 151 of Code of Civil Procedure, 1908 (hereinafter referred as "CPC").

2. Petitioner herein is the defendant no. 1, respondent no. 1 and 2 herein are the plaintiffs and respondent no. 3 is defendant no. 2 before the learned Trial Court which is pending adjudication.



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3. The relevant facts for the purpose of adjudication of the present case are that the respondent no. 1 & 2 herein filed a civil suit before the learned Trial Court for permanent and mandatory injunction and damages against the petitioner. Petitioner herein expired on 14.06.2020 and consequently, respondent no. 1 & 2 moved an application on 04.11.2020 under Order XXII Rule 4 & 10A read with Section 151 of CPC along with an application under Section 5 of Limitation Act, 1963 (hereinafter referred as “Act”) seeking to implead the legal representatives (hereinafter referred as ‘LRs’) of the deceased petitioner. Subsequently, petitioner filed a reply to the said application under Order XXII Rule 4 & 10A CPC thereby taking objections that the suit got abated against petitioner after the expiry of the statutory period and that Vipin Sharma is the sole legal representative of the deceased petitioner. However, the learned Trial Court allowed the application for impleadment of Vipin Sharma and Honey Sharma which is impermissible, thus, the impugned order is patently illegal. Aggrieved by the said order, the petitioner has filed the present petition.

Submissions by the Petitioner

4. The learned counsel for the petitioner submits that, the suit got abated against the deceased petitioner after the expiry of the statutory window period of 90 days from the date of death of the petitioner as required under Order XXII Rule 4 (3) CPC read with Article 120 of the Schedule of the Act. Moreover, there was no specific application moved for setting aside of the abatement of the suit by the respondent no. 1 & 2 under Order XXII Rule 4 (5) CPC, therefore, the application moved under Order XXII Rule



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4(3) CPC *per se* is not maintainable. The Reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the case titled as *T. Gnanavel v. T.S. Kanagaraj & Anr.*, 2009 (14) SCC 294.

5. It is further submitted that only Vipin Sharma is the rightful legal heir of the deceased petitioner. On the other hand, Honey Sharma is the daughter-in-law of the deceased petitioner. As per Section 2 (11) CPC, a legal representative is a person who in law represents the estate of the deceased person, therefore, under no circumstances the daughter-in-law is the LR of the deceased. Thus, in the aforesaid circumstances the impugned order be set aside.

Submissions by the Respondent:

6. Conversely, learned counsel for respondents submitted that the legal representatives of late Ramesh Chand Sharma have filed an application for their impleadment in another Suit No. 210134/2016 titled as "*R.C Sharma v. Gajindrapal Anand*" pending before the learned ADJ but as per knowledge of the respondents, no intimation to this effect whatsoever was given by the petitioner to the respondents or counsel for respondents or to the Learned Trial Court in the present suit pending before the learned Trial Court between the parties herein.

7. He further submitted that incorporation of Rule 10A in Order XXII CPC has made it obligatory on the parties to inform the court and to the opposite party about the death of plaintiff/defendant to the suit. Therefore, the limitation for filing the application for impleadment under Rule 4 of Order XXII starts from the date of such information. In the present case, the petitioner died on 14.06.2020 and the respondents came to know about the



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death of Mr. Ramesh Chand Sharma only on 30.10.2020. Hence, the limitation for filing the application for impleadment of the LR's under Order XXII Rule 4 starts from the date of such intimation, therefore, there is no delay on the part of the respondent/plaintiff for filing the application under Order XXII Rule 4 CPC. Moreover, the Hon'ble Supreme Court by taking Suo-moto cognizance of with respect to limitation during Covid-19/pandemic period, had extended the limitation period w.e.f 23.03.2020 to 28.02.2022.

8. The position of law is well settled that the order XXII rules 4 and 5 CPC are mandatory provisions. Order XXII rule 1 CPC provides that on death of a plaintiff or defendant the suit shall not abate if the right to sue survives. Order XXII rule 2 CPC deals with procedure where one of the several plaintiffs or defendants dies and right to sue survives. Order XXIII rule 3 CPC relates to the procedure in case of death of one of several plaintiffs or sole plaintiff. Rule XXII Rule 4 CPC however deals with the procedure in case of death of one of several defendants or sole defendant.

9. For ready reference order XXII Rule 4 CPC is reproduced as under:

“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 defendants to be made a party 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



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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 therefore 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 with 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.”

10. Plain reading of the provisions under order XXII rule 4(3) of CPC shows that where within the time frame as provided by laws if right to sue survives, no application for impleadment of legal heirs of deceased defendant is made, the suit shall abate as against deceased defendant.

11. It is further relevant to refer to Article 120 and 121 of the Act



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prescribing the period within which the application for impleadment of the legal heirs vis a vis deceased plaintiff or defendant and the application to set aside the abatement is to be moved.

Description of Suits	Period of Limitation	Time from which period begins to run
120. Under the Code of Civil Procedure, 1908 (5 of 1908), to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party.	Ninety days.	The date of death of the plaintiff, appellant, defendant or respondent, as the case may be.
121. Under the same Code for an order to set aside an abatement.	Sixty days.	The date of abatement.

12. In the present petition, petitioner is mainly aggrieved with the fact that although abatement of suit has set in, the respondents have not taken any step to move an application to set aside the abatement but have moved application to implead the legal heirs of deceased petitioner seeking extension of limitation petition which is impermissible in law. To the contrary, respondents are seeking extension of period of limitation beyond



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90 days for impleading the LR's of deceased petitioner by way of the application moved by them under Order XXII Rule 4(5) CPC.

13. The learned Trial Court while disposing of the application of impleadment of the LR's has taken the following view in the impugned order dated 06.08.2022 passed by Learned Trial Court observes the following:-

“12. The plaintiff has averred in his application that he came to know about the death of Sh. Ramesh Chand Sharma only on 30.10.2020 and neither the LR's of Late Sh. Ramesh Chand Sharma nor his advocate informed him about his death, as nothing has been placed on record by defendant to show that the factum of death of defendant no. 1 was within the knowledge of plaintiff. Moreover, the period of death of Sh. Ramesh Chand Sharma was during covid period for which the limitation for filing the impleadment application has already been extended by Hon'ble Supreme Court, accordingly, I am of the opinion that the instant application deserves to be allowed. The judgment cited by Ld. Counsel for the defendant is appreciable but it is not applicable to the facts and circumstances of the present case.

13. in view of the above discussion, the application under Order 22 Rule 4 and 9 read with Section 151 CPC moved on behalf of plaintiff is accordingly allowed. Let amended memo of parties be filed.”

14. It is not disputed that petitioner expired during the covid period. The Hon'ble Supreme Court issued guidelines in ***Re Cognizance for Extension of Limitation***, (2021) 17 SCC 231, and observed as under:

“3. Thereafter on 8-3-2021 it was noticed that the country is returning to normalcy and since all the courts and tribunals have started functioning either physically or by virtual mode, extension of limitation was regulated and brought to an end. The suo motu proceedings were, thus, disposed of issuing the following directions: (SCC p. 453, para 2)



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"2.... 2.1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.

2.2. In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.

2.3. The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or Tribunal can condone delay) and termination of proceedings.

2.4. The Government of India shall amend the guidelines for containment zones, to state:

'Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time-bound applications, including for legal purposes, and educational and job-related requirements.'

x x x

6. We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimise the hardship of litigant-public in all the States. We, therefore, restore the order dated 23-3-2020 and in continuation of the order dated 8-3-2021 direct that the period(s) of limitation, as prescribed



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under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.”

15. As would be manifest from the above discussions, in the peculiar facts and circumstances of the case, Vipin Sharma being the sole legal heir of the deceased petitioner is impleaded as his legal heir in the suit however, not Honey Sharma who is the daughter in law of the deceased petitioner. The impugned order is accordingly modified to the extent of impleading only Vipin Sharma as the legal heir of the deceased petitioner.
16. The decision in case of *T. Gnanavel v. T.S. Kanagaraj & Anr.*, 2009 (14) SCC 294(Supra) being in the factual context of respective case is distinguishable from the facts of the present case.
17. Consequently, the petitioner is disposed of.

SHALINDER KAUR, J.

MARCH 01, 2024
SU/SDS