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

+ RSA 20/2021 and CM APPL. 7344/2021, CM APPL. 12339/2024,
CM APPL. 51655/2024, CM APPL. 70507/2024, CM APPL.
70508/2024

KAMLESH DEVI

.....Appellant

Through: Mr. Sudhir Tewatia, Adv.

versus

BIMLA DEVI DECEASED & ORS.

.....Respondents

Through: Mr. Counsel (*appearance not given.*)

+ RSA 21/2021 and CM APPL. 7357/2021, CM APPL. 28024/2024
CM APPL. 28025/2024, CM APPL. 51620/2024, CM APPL.
70505/2024, CM APPL. 70506/2024

KAMLESH DEVI

.....Appellant

Through: Mr. Sudhir Tewatia, Adv.

versus

BIMLA DEVI (DECEASED) THROUGH LRS
& ANR.

.....Respondents

Through: Mr. Counsel (*appearance not given.*)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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03.12.2024

1. Heard learned counsel for the parties on CM APPL. 70507/2024, an application filed under Order XXII Rule 9 (2) read with Section 151 of the Code of Civil Procedure, 1908 (CPC) supported with CM APPL.



70508/2024, an application under Section 5 of the Limitation Act for condonation of delay of 575 days of filing CM APPL. 70507. Furthermore, CM APPL. 28024/2024, an application under Order XXII Rule 4 of CPC has been filed by the appellant for bringing on record the legal heirs of deceased appellant.

2. Learned counsel for the appellant submits that the appellant has preferred two appeals, one challenging the judgment and decree of the Trial Court dismissing the counter-claim filed by the defendant, and the other against the dismissal of the civil suit instituted by the original plaintiff.

3. Learned counsel appearing on behalf of the appellant further submits that CM APPL. 70505/2024, an application under Order XXII Rule 9(2) of the CPC, has been filed to set aside the abatement caused due to the delay in filing applications for bringing on record the legal heirs of the deceased appellant. Learned counsel submitted that the deceased appellant is survived by three legal heirs, her sons, Sh. Naveen Kumar, Sh. Sunil Kumar, and Sh. Anil Kumar. He explains that there was an *inter se* dispute amongst the legal heirs of the deceased appellant, and despite best efforts, they were not collectively willing to file the application. Under compelling circumstances, one of the legal heirs, Sh. Sunil Kumar, filed the present application to implead all the legal heirs of the deceased appellant.

4. He further contended that after the demise of their mother, disputes arose amongst the legal heirs, particularly since the shop in question is in the possession of Sh. Sunil Kumar, while the other heirs are not supporting his case. This dispute, he submits, led to a delay in filing the present applications.

5. Learned counsel for the appellant further submits that the sole



appellant passed away on 01.12.2022, while the application for bringing on record the legal heirs was filed on 08.05.2024. He further submits that during the consideration of the said application, it came to the light that the appeal had abated, necessitating the filing of an application under Order XXII Rule 9(2) of the CPC for setting aside the abatement. Consequently, appropriate steps were taken to file the said application.

6. The submissions advanced by the learned counsel for the appellant are vehemently opposed by the learned counsel representing the respondents.

7. I have carefully considered the arguments put forth by the parties and have perused the record.

8. The sole reason cited by the appellant in the applications filed under Section 5 of the Limitation Act, seeking condonation of a delay of 575 days in filing applications under Order XXII Rule 9(2) of the CPC read with Section 151 of the CPC, is the *inter-se* dispute amongst the legal heirs of the deceased appellant.

9. It remains undisputed that the sole appellant passed away on 01.12.2022, and this fact was within the knowledge of her legal heirs. Additionally, it remains unchallenged that the legal heirs were aware of the pendency of the instant appeals before this Court. Despite being cognizant of the necessity to take steps for bringing the legal heirs on record, no such steps were taken within the prescribed time.

10. Upon considering the circumstances of the case and the submissions advanced, the Court is of the view that the *inter-se* dispute amongst the appellants does not justify the failure to take timely steps for filing the applications to pursue the instant appeals. The explanation offered does not meet the threshold of “*sufficient cause*” as required under the law.



11. The High Court of Punjab and Haryana, in the case of ***Firm Dittu Ram Eyedan v. Om Press Co., Ltd***¹ has elucidated the principles governing the determination of “sufficient cause” for setting aside abatement when an application to bring the legal representatives of a deceased defendant on record is filed after the expiry of the limitation period. In light of the legal position laid down in the said judgment, and in the absence of any cogent and coherent reasons advanced by the appellants for condonation of delay, the application under Section 5 of the Limitation Act is dismissed.

12. Accordingly, both the applications i.e. under Order XXII Rule 9(2) and Order XXII Rule 4 of the CPC shall also stand dismissed.

13. In view of the above, the instant appeals also stand dismissed along with other pending applications.

PURUSHAINdra KUMAR KAURAV, J

DECEMBER 3, 2024

aks/sp

¹ 1959 SCC OnLine Punj 255