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

+ **C.R.P. 92/2024**

NIRMAL PAHWA AND ORS Petitioners

Through: **Mr. Rohit Oberoi, Adv.**

versus

SARDAR GURCHARAN SINGH CHAWLA (DECEASED)
THROUGH HIS LRS AND ORS Respondents

Through: **Mr. P.S. Bindra, Sr. Adv. with**
Mr. Bhuvneshwar Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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07.03.2024

CM APPL. 14283/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

C.R.P. 92/2024 and CM APPL. 14282/2024 (stay)

3. The petitioners/revisionists, who are defendants in the suit pending before the learned Trial Court instituted by the respondents No.1 and 2/plaintiffs No.1 and 2 (now represented through the legal heirs) are assailing the impugned order dated 09.01.2024 passed by the learned Civil Judge-03, South-East District, New Delhi, whereby their application under Order XLVII Rule 1 read with Section 114 of the CPC seeking review of earlier order dated 02.03.2023 whereby application under Order XXII Rule 3 CPC was allowed.
4. Suffice to state that respondents No.1 and 2 instituted the suit in question, who passed away on 30.04.2021 and 28.05.2021 respectively. An application was moved on 05.08.2021 for bringing on



record legal heirs of the deceased/plaintiffs. The said application was allowed by the learned Trial Court vide order dated 02.03.2023 and the petitioners sought review on the following grounds, as reflected by the learned Trial Court in its order dated 09.01.2024:

“(a) That the application for impleadment of LR of plaintiff no. 1 was filed on 29.07.2021, wherein the affidavit of one of the LR namely Tarveen Kaur is dated 05.09.2022.

(b) That the application for impleadment of LR of plaintiff no. 2 was moved on 29.09.2021, wherein the affidavit of Smt. Bhupender Kaur - Widow of the plaintiff, pre-dates the application as the affidavit is dated 28.07.2021.

(c) That the affidavit of Gaganpreet Singh Chawal ie the son of plaintiff no. 2 is dated 14.06.2022 Le their affidavit is ante-dated the application.

(4) That in reply to application w/O 22 R3 CPC it is pleaded that the proposed LR are not the legal heirs of deceased plaintiff no. 1&2 and therefore, provision of O 22 R5 CPC has not been complied.

(e) That no right ever accrued in favour of Sh. Madan Singh Chawla father of deceased plaintiffs) and therefore, no right whatsoever would have devolved on the LR of deceased plaintiffs.

(f) That the court has not perused the written arguments of the defendants on application under O 22 R3 CPC.”

5. The learned Trial Court **delving** into the provisions of Order XLVII Rule 1 CPC held as under:

“As far as objection no. a to d are concerned, all are objections w.r.t. the affidavits of the LR, wherein defendant claims that affidavits of three such LR namely Tarveen Kaur (LR of plaintiff no. 1) and Bhupender Kaur and Gaganpreet Singh(LRs of plaintiff no. 2) do not coincide with the date of application under O 22 R 3 CPC and therefore, the said applications are ineffective and not tenable in law. First of all the purpose of order 22 CPC is to bring LR of deceased parties on record, wherein right to sue survives within the stipulated period of limitation, so that the suit can continue at the behest of the LR. In the present case, the application clearly stating that the deceased plaintiffs are left with LR has been filed on time though without filing the affidavits of



all the LRs. Having said that this court is also duty bound to take cognizance of the prevailing circumstances in the country at the time of pandemic induced by COVID 19, wherein even the Apex court of the country had suspended the period of limitation considering the gravity of situation. Furthermore, the filing of affidavit after the date of application or even one day before the date of application is a curable defect only related to procedure, wherein the death of the plaintiffs have never been denied by the defendants. Further, such defect was invariably cured by the plaintiffs, therefore, a procedural lapse cannot be made stringent to the extent that the ends of justice is hampered. Therefore, such procedure on the part of the LRs cannot be made a ground for abatement of suit.

Further, the defendant has taken the plea that LRs are not the legal LRs of plaintiff no. 1 & 2 on the strength of Will dated 08.07.2010 as the said Will has not been probated and therefore, O 22 R 5 CPC has not been complied with. It may be noted that defendants have not raised the plea that LRs of plaintiff no. 1 & 2 are not the natural successors of deceased plaintiffs, however, the only objection is w.r.t. probate of Will dated 08.07.2010. It is therefore, essential to note that probate of Will is not a mandatory requirement of law in Delhi as per Section 213 of Indian Succession Act and therefore, a Will in itself cannot be impugned on the basis of lack of probate. Therefore, this objection itself is also found to be unsustainable.

Further, defendant has also impugned the order dated 02.03.2023 of this court on the ground that no right whatsoever, ever accrued in favour of Sh. Madan Singh Chawla and therefore, the suit must abate by operation of law. The said issue has been dealt sufficiently in the impugned order and no mistake, error apparent or any subsequent event has been highlighted by the defendant so as to review the order on this aspect.

The objection of the defendant that written arguments were not perused is itself found to be preposterous as the order clearly states that the record has been perused, which clearly indicate that the entire file has been gone through for the purpose of the order including the written arguments. Additionally, the pleadings and application/reply of both the parties have been examined threadbare and the arguments were also heard in length by the court. Even otherwise, the written arguments are only filed for the assistance of the court so that brief synopsis of the material in hand can be provided for expeditious disposal. Therefore, addition of extra material in the written arguments beyond the pleadings or the application of the parties in itself is impermissible. Therefore, this objection of the defendant is also found meritless.

With these observations application of the defendant under O 47 R 1 r/w Section 1 of CPC stands dismissed.”



6. *Ex-facie*, the reasons given by the learned Trial Court in dismissing the review application does not suffer from any illegality, perversity or incorrect approach in law. The only requirement of order XXII Rule 3 CPC is that application for bringing on record the legal heirs of the deceased/plaintiff(s) be filed within a period of limitation prescribed.

7. The legal heirs merely step into the shoes of the predecessor-in-interest and right to sue is in the nature of right to proceed with the legal proceedings or trial, which is not to be taken as legal heirs having any legal right on merits of the case. Whether the legal heirs succeed on merits of the case or not would be entirely a different issue. There is no requirement of even filing of affidavit by the legal heirs to the application under order XXII Rule 3 CPC as such. However, it may be desired wherever the Court thinks expedient so as to be certain about the identity of the legal heirs. In the instant matter, there is no issue of identity of the legal heirs in the present matter.

8. Accordingly, the present revision petition is dismissed along with the pending application.

9. This order shall be without prejudice to the rights and contentions of the parties in the main suit.

10. A copy of this order be sent to the learned Trial Court for information and record.

DHARMESH SHARMA, J.

MARCH 7, 2024/ck