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

+ RFA 283/2019, CM APPL. 46188/2023, CM APPL. 46190/2023
PAWAN KUMAR & OTHERSAppellant

Through: Mr. S. K. Gautam, Advocate.

versus

YAD RAMRespondent

Through: Mr. Manu Bansal, Mr. Rohit Nain,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **08.08.2024**

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1. This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 1171 days in filing application under Order 22 Rule 4 of CPC for bringing on record legal heirs of sole respondent, namely Sh. Yad Ram.
2. Learned counsel who appears for the applicant submits that the sole respondent expired on 15.08.2019 who was survived by the legal heirs, details of whom are mentioned in paragraph no.2 of the application.
3. While taking this Court to paragraph no.3, he submits that the application for bringing on record the legal heirs could not be moved earlier as the complete information of the legal heirs was not available to the appellant.
4. He further submits that the legal heirs of the deceased respondent reside in different locations and on collecting the necessary information, the appellant furnished the same to his previous counsel who did not take the necessary steps and therefore, the appellants have engaged a new counsel and accordingly,



necessary application came to be filed, which resulted in causing delay of 1171 days.

5. He, therefore, submits that the delay in moving the present application is unintentional and the same be condoned in the interest of justice.

6. *Per contra*, learned counsel who appears for the respondent strongly opposes the application and he submits that if the main application under Order 22 Rule 4 of CPC is perused carefully, the same would indicate that on 15.08.2019 i.e., the date of death itself, the appellant came to know about the demise of the respondent. On that perspicuous fact, he submits that firstly, within a period of limitation i.e., 90 days, no efforts were made to file the application and secondly, even thereafter, the appellants have been unable to bring on record as to what steps were taken by them to find out address and details of the legal heirs of the deceased respondent.

7. Learned counsel further submits that even assuming that certain information was submitted to the earlier counsel who did not file the application, even in that case also, on 18.08.2022 the present counsel has been engaged, despite that no prompt steps were taken. He thus, submits that the application is bereft of the merit. The delay in filing of instant application has not been properly explained, therefore, the Court should not condone the inordinate delay in filing the said application.

8. In the instant case, going by the averments made by the applicant in paragraph nos.3 to 7, no reason could be ascertained as to why firstly, within the limitation period and secondly, even thereafter, the applicants have not filed the necessary application. The applicants have only stated that on account of unavailability of the location and details of the LRs, application was not filed in limitation. Paragraph nos. 3 to 8 of the application read as under :-



“3.That present application could not be moved earlier as the complete information of the said legal heirs was not available with the appellants, as the said legal heirs reside in different locations. The appellant gave the relevant information to his previous counsel, but he did not take proper steps to move appropriate application for the reasons not known to the applicant.

4.That for the reasons stated above, the applicant took steps to engage the present counsel and accordingly the an application U/O XXII Rule 4 R/w Section 151 of The Code of Civil Procedure has been moved with a delay of 1171 days. It is also pertinent to mention that the applicant does not have copy of death certificate of the said Respondent/deceased

5.That the delay in moving the present application was not intentional but due to the above said reasons.

6.That the said legal heirs are just, proper and necessary to bring on record, for proper adjudication of the present appeal.

7.That the applicant has not filed any similar application before this Hon’ble Court or before any other Hon’ble Court for the purpose of relief prayed in the present application.

8.That in view of the above said facts and circumstances the present application may please be allowed and the said legal heirs may please be allowed to bring on record in the present case; thereby allowing the applicant to file amended memo of parties accordingly in the interest of justice.”

9. The legal position with regard to impleadment of legal heirs under Order XXII Rule 4 CPC as well as abatement of suit under Order XXII Rule 9 of the CPC has been elucidated by the Supreme Court in the case of ***Union of India v. Ram Charan***¹, which reads as under:-

“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 over-strict in expecting such proof of the

¹ 1963 SCC OnLine SC 247.



*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 scrutinize 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.***

9. It is true, as contended, that it is no duty of the appellant to make regular enquiries from time to time about the health or existence of the opposite party, but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself, justify his application for setting aside the abatement. That is not the law. Rule 9 of Order 22 of the Code requires the plaintiff to prove that he was prevented by any sufficient cause from continuing the suit. The mere allegation about his not coming to know of the death of the opposite party is not sufficient. He had to state reasons which, according to him, led to his not knowing of the death of the defendant within reasonable time and to establish those reasons to the satisfaction of the court, specially when the correctness of those reasons is challenged by the legal representatives of the deceased who have secured a valuable right on the abatement of the suit.

12. The consequence of the abatement of the suit against the defendant is that no fresh suit can be brought on the same cause of action. Sub-rule (1) of Rule 9 bars a fresh suit. The only remedy open to the plaintiff or the person claiming to be the legal representative of the deceased plaintiff is to get the abatement of the suit set aside and this he can do by making an application for that purpose within time. The court will set aside the abatement if it is proved that the applicant was prevented by any sufficient cause from continuing the suit. This means that the applicant had to allege and establish facts which, in the view of the court, be a sufficient reason for his not making the application for bringing on record the legal representatives of the deceased within time. If no such facts are alleged, none can be established and, in that case the court cannot set aside the abatement of the suit unless the very circumstances of the case make it so obvious that the court be in a position to hold that there was sufficient cause for the applicant's not continuing the suit by taking necessary steps within the period of limitation. Such would be a very rare case. This means that the bare statement of the applicant that he came to know of the death of the other party more than three months after the death will not ordinarily be



sufficient for the court's holding that the applicant had sufficient cause for not impleading the legal representatives within time. If the mere fact that the applicant had known of the death belatedly was sufficient for the court to set aside the abatement, the legislature would have expressed itself differently and would not have required the applicant to prove that he was prevented by any sufficient cause from continuing the suit. The period of limitation prescribed for making such an application in three months, under Article 171 of the first Schedule to the Limitation Act. This is a sufficient long period and appears to have been fixed by the legislature on the expectancy that ordinarily the plaintiff would be able to learn of the death of the defendant and of the persons who are his legal representatives within that period. The legislature might have expected that ordinarily the interval between two successive hearings of a suit will be much within three months and the absence of any defendant within that period at a certain hearing may be accounted by his counsel or some relation to be due to his death or may make the plaintiff inquisitive about the reasons for the other party's absence. 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 176 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. Court have to use their discretion in the matter soundly in the interests of justice."

10. No efforts are shown to have been made by the appellants for getting the location and the details of the legal heirs. The averments are completely vague and superficial. The Court is, therefore, of the considered opinion that the instant



application deserves to be rejected.

11. Resultantly, the application under Order 22 Rule 4 of the CPC is also dismissed. Consequently, the appeal abates.

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12. Accordingly, the appeal is also dismissed alongwith pending applications.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 8, 2024/KG