



2024:DHC:7824



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 30th September, 2024

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C.R.P. 226/2024 & CM APPL. 43116/2024

RAJ KISHAN CHABRA (SINCE DECEASED) THROUGH LR. ANIL
CHABRAPetitioner

Through: Mr. Arjun Mukherjee and Mr. Sahil Gupta,
Advocates.

versus

BHARAT KALRA AND ORS.Respondents

Through: Mr. Shrey Ashat, Ms. Preetika Mishra and
Mr. Vicky Kumar, Advocates for R-2.
Ms. Jasraj Singh, Advocate for R-3.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (Oral)****NEENA BANSAL KRISHNA, J.**

1. Revision Petition under Section 115 read with Section 151 of the Cr.P.C has been filed to challenge the Order dated 13.05.2024 *whereby* the Learned District Judge has allowed the Application under Order 22 Rule 4 CPC, filed on behalf of the respondent/plaintiff.

2. ***Briefly stated, in*** the Civil Suit bearing No. 402/2020 titled *Bharat Kalra vs. Raj Kishan Chabra*, defendant expired on 07.01.2023. The Application under O.XXII Rule 4 CPC for substitution of LRs of deceased defendant was filed by the respondent on 03.06.2023 which was beyond the period of 90 days during which

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period the suit stood abated. There was no Application filed for setting aside of the abatement of the Suit. Therefore, it is asserted that the impugned Order dated 13.05.2024 permitting substitution of LR's of the respondent/plaintiff under OXXII Rule 4 CPC in an abated suit, is against the law and is liable to be set aside.

3. ***It is argued on behalf of the Petitioner/ LR's of the defendant*** that Sh. Raj Kishan Chabra had died on 07.01.2023. The Respondent/plaintiff had ample opportunity to file the Application before the expiry of the Limitation period on 07.04.2024 i.e. the period of 90 days from death of Sh. Raj Kishan Chabra. However, the same was never filed. In fact, the Application for substitution was prepared only on 02.06.2023, as per the supporting affidavit. The Application for substitution of LR's has been filed beyond the period of 90 days during which the suit stood abated. Without there being any Application for setting aside the abatement, the Application under Order 22 Rule 4 CPC could not have been allowed.

4. It is further argued that even if the date of knowledge of death is taken as 10.03.2023 as claimed by the respondent/plaintiff, the period is to be reckoned from the date of death and not the knowledge. Even thereafter, the Plaintiff had sufficient time till 07.04.2023 for the period of 90 days to expire. It is, therefore, submitted that the impugned Order is liable to be set aside.

5. Reliance has been placed on Union of India vs. Ram Charan & Ors, AIR 1964 SC 215; DSGMC vs. Jagmohan Singh & Ors, 286 (2022) DLT 3; Deepak Verma vs. Daya Nand, 2019:DHC:3103 and Bir Randhir Singh vs. Kartar Singh, 50(1993) DLT 419.

6. ***Respondent No.3*** is the Performa party who is supporting the case of petitioner.

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7. None is present on behalf of respondent No.1.
8. **Respondent No. 2** however, has argued that they came to know about the demise of the father of the petitioner/Defendant only on 10.03.2023 when an Application for substitution was filed on behalf of the petitioner in a connected Civil Suit in which they are the plaintiff. The Application for substitution has been filed in accordance with law and the present petition is liable to be rejected.
9. **Submissions Heard.**
10. Admittedly, the Application for substitution of legal heirs under Order XXII Rule 4 of the CPC, 1908 has been filed on 03.06.2023, which is beyond a period of 90 days from the date of demise of the defendant.
11. The procedure for substitution of legal heirs in case of demise of either party is provided in Order XXII CPC, 1908. Order XXII Rule 3 deals with substitution of legal heirs of deceased plaintiff, while Rule 4 provides for substitution in case of death of one of the several defendants or the sole defendant.
12. Order XXII Rule 4 Sub-Clause 5 deals with Abatement of Suit, and reads as under: -

“Order XXII – Death, Marriage and Insolvency or Parties

...

(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 therefor 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

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for not making the application within 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”.

13. Rule 9 of Order XXII of CPC, 1908 provides for the consequence of not filing an Application for substitution of legal heir within 90 days, which reads as under: -

“Order XXII – Death, Marriage and Insolvency or Parties

Rule 9 - Effect of abatement or dismissal.—

(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the 1 [Indian Limitation Act, 1877 (15 of 1877)] shall apply to applications under sub-rule (2).”

14. Rule 10A of Order XXII of CPC, 1908 casts a duty on the counsel of the deceased party represented by him, to communicate to the Court about the death of the party. For this limited purpose, deeming fiction of the contract being kept subsisting between the learned Advocate and the deceased party is introduced so that either party may not be unaware at the time of hearing of the matter. Rule 10A of Order XXII of CPC, 1908 read as under: -

“Order XXII – Death, Marriage and Insolvency or Parties

Rule 10A - Duty of pleader to communicate to Court death of a party.—Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall

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inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”

15. Articles 120 and 121 of the Limitation Act, 1963 prescribes the period within which the aforesaid Applications must be made. According to Article 120 of the Limitation Act, 1963, the Application for substitution of legal representative either of plaintiff or defendant has to be made within 90 days from the date of demise of the party.

16. Article 121 of the Limitation Act, 1963 further provides that an Application to set aside the abatement has to be made within 60 days of the date of abatement.

17. From these specific provisions, it is evident that the Application for substitution by the legal heirs has to be filed within 90 days which has to be reckoned from the date of demise and not date of knowledge. Further, in case no Application is moved, the Suit automatically abates. No formal order is required for abatement which happens automatically, as has been held in the case of Mithailal Dalsangar Singh and Ors vs. Annabai Devram Kini and Ors., (2003) 10 SCC 691.

18. Further 60 days are provided for moving an Application for setting aside the abatement. However, Section 5 of the Limitation Act, 1963 has been made applicable for an Application for setting aside the abatement whereby indicating that even if the Abatement Application has not been filed within the time, the delay can be condoned under S.5 Limitation Act.

19. Before considering the principles of condonation of delay, the question which requires deliberation is whether without moving the Application under Order XXII Rule 9 of CPC, 1908, the abatement can be set aside by the Court. A

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reference be again made to Mithailal Dalsangar Singh and Ors (Supra), wherein the Apex Court had observed that the Courts must adopt a justice-oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having a *lis* determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disintitiled himself from seeking the indulgence of the Court. The question of availability of '*sufficient cause*' within the meaning of Sub-Rule (1) of Rule (9) of Order XXII and of Section 5 of the Indian Limitation Act, 1963 deserves to be given weight, and once arrived at, would not normally be interfered with by superior jurisdiction.

20. It was further observed in Mithailal Dalsangar Singh and Ors (Supra) that while the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally, a simple prayer for bringing the legal representatives on record without specifically praying for setting aside of abatement, may in substance be construed as a prayer for setting aside abatement.

21. Generally, once the Suit is abated, the Application under Order XXII Rule 9 of CPC, 1908 and if delayed and is not supported by Section 5 of the Limitation Act, 1963, must be filed, but even an Application under Order XXII Rule 4 of CPC, 1908 seeking substitution of legal heirs, even in the cases of abatement, would have the effect of setting aside the abatement even though the relief is not claimed in so many words.

22. In the case of Perumon Bhagvathy Devaswom vs. Bhargavi Amma, 2008 (8) SCC 321, the Apex Court observed that the words '*sufficient cause*' for not making the Application within the period of limitation, should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts

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and circumstances and the type of the case. The words '*sufficient cause*' must be given a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of *bona fides*, deliberate inaction or negligence on the part of the party.

23. The factors to be considered for determining sufficient cause was explained by the Apex Court in the case of Ramlal vs. Rewa Coalfields Ltd, AIR 1962 SC 361 has observed that while exercising such discretion there are two considerations which must be kept in mind. The *first consideration* is that the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The *second consideration* which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the Court to condone delay and admit the Appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

24. In Ramlal (*Supra*), it has further been observed that even if sufficient cause has been shown, a party is not entitled to condonation of delay as a matter of right. The proof of *sufficient cause* is condition precedent for exercise of the discretionary jurisdiction vested in the Court by Section 5 of the Limitation Act, 1963. If sufficient cause is not proved, nothing further has to be done. The application for condonation of delay has to be dismissed on this ground alone. If sufficient cause is shown, then the Court has to inquire whether in its discretion, it should condone the delay. This aspect of the matter introduces consideration of all relevant facts at this stage. The diligence of the party or its *bona fide* may fall for

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consideration.

25. In the context of Order XXII Rule 9 of CPC, 1908, apex Court in Balwant Singh (dead) vs. Jagdish Singh and Ors. (2010) 8 SCC 685 it was noted that at times, the Courts have taken a liberal attitude, while on other occasions, a stricter view has been preferred whenever the explanation has not been found satisfactory. Therefore, there can be no straight-jacket formula which can be uniformly applied to all cases without a reference to the facts and circumstances of the given case. A word of caution was also given that the well-settled cannons of interpretative jurisprudence provides that the Courts should not give such interpretation to the provisions as would render them ineffective or odious. Once the provision of Order XXII of CPC, 1908 has been enacted with particular reference to Rule 9 and the Rules of Limitation Act, 1963 have been made applicable to entertain such applications, these provisions must be given and true and correct meaning must be applied whenever called for. Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant to whom want of *bona fide* is imputable.

26. It is the sufficiency of the satisfactory explanation and not the length of delay which is decisive for condonation of delay, as has been held in the case of Perumon Bhagvathy Devaswom, (*Supra*).

27. In the light of the aforesaid principles, the facts of the present case may now be considered. The respondents herein failed to file their Application for substitution of legal heirs under Order XXII Rule 4 of CPC, 1908 within a period of 90 days but after a delay of 58 days. The explanation given is that they came to know about the demise of the defendant only on 10.03.2023 when the counsel for

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the defendant filed a substitution application in the connected litigation between the parties. From the said date, this Application has been filed within 90 days i.e., on 03.06.2023. Here is the case wherein there is inadvertence on the part of the counsel who has miscalculated the period of limitation. The party who is essentially dependent upon the counsel insofar as the legal aspects of the trial are concerned, cannot be said to have been negligent but is a case of inadvertence. No lack of diligence or *malafide* can be imputed to the party nor was the delay on account of the conduct of the party. Though no separate Application under Order XXII Rule 9 of CPC, 1908 has been filed for setting aside the abatement, but in the case of Mithailal Dalsangar Singh and Ors (Supra), it has been observed that in appropriate cases, the request for setting aside the abatement may be read into the Application under Order XXII Rule 4 of CPC, 1908. In case, there is consideration of condonation of delay, then too, instead of taking a pedantic approach of insisting on an Application under Section 5 of the Limitation Act, 1963 for condonation of delay, the Court is well within its power to exercise the jurisdiction of condoning the delay, in case it is found that the delay has been sufficiently explained in the application.

28. In the present case, on consideration of the Application, it is evident that there is a miscalculation of the period of limitation which has resulted in a delay of 58 days. No doubt, the limitation has to be calculated from the date of demise of the party and the abatement automatically happens after 90 days in case the substitution Application is not filed, but instead of now driving the parties to move a separate Application under Order XXII Rule 4 along with Application under Order XXII Rule 9 read with Section 5 of the Limitation Act, 1963, the prudence requires that the condonation of delay may be read in the impugned Order. The

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respondent/plaintiff undeniably has filed the Application only for substitution of legal heirs based on the wrong premise that the limitation has to be calculated from the date of death of the party and not from the date of knowledge. The Trial Court has duly considered this Application and permitted the substitution of legal heir. It can only be now concluded that while permitting the substitution, the abatement by implication has been set aside by inferring sufficient justification for condoning the delay in moving the Application while permitting the substitution of the legal heirs.

29. Considering the gamut of facts, it is hereby held that the learned Trial Court was justified in exercising its discretion in allowing the Application and permitting the substitution of the legal heirs. The relief of Order XXII Rule 9 of CPC, 1908 along with the condonation of delay is read into the Application under Order XXII Rule 4 of CPC, 1908 that was filed on behalf of the legal heirs. Thus, it is held that there is no infirmity in the Order of the learned Trial Court.

30. Accordingly, the present Revision Petition is hereby dismissed.

**NEENA BANSAL KRISHNA
(JUDGE)**

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