



2024:002:3109



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

% **Date of decision: 16th April, 2024**

+ **C.R.P. 212/2022 & CM APPL. 55350/2022**

M/S SCINDIA POTTERIES AND SERVICES PVT. LTD.

..... Petitioner

Through: **Mr. Apoorv Agarwal & Ms.
Divya Verma, Advs.**

versus

UNION OF INDIA & ORS. Respondents

Through: **Mr. Nitinjya Chaudhry, Sr.
Panel Counsel for R1.
Ms. Neeru, Adv. for R2 to R5.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

C.R.P. 212/2022 & CM APPL. 55350/2022

1. The petitioner, who is defendant in a suit filed by the plaintiff (since deceased and now being represented through the respondents-legal heirs), assails the impugned order dated 29.08.2022 passed by the learned Additional Senior Civil Judge, Patial House Courts, New Delhi¹, whereby the application moved on behalf of the applicants/respondents for substituting them on the record under Order

¹ Trial Court



2024:002:3109



XXIII Rule 3 CPC, on the demise of the plaintiff, and setting aside abetment of proceedings was allowed.

2. Learned counsel for the petitioner/defendant has urged that firstly, right to sue did not survive in favour of the legal heirs of the deceased since the suit is for seeking permanent injunction which is in respect of a right in *personam*, and secondly, that the application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908² along with application under Section 5 of Limitation Act, 1963 had been filed beyond the prescribed period, which expired on 26.02.2020 whereas the application had been moved on 19.04.2022, and therefore, the matter suit abated.

3. Learned counsel appearing for the respondents No. 2 to 5 has urged to the contrary.

4. Having heard the learned counsels for the rival parties and perusal of the record this Court finds that the present revision petition is bereft of any merits. The deceased-plaintiff instituted the suit claiming possessory rights in respect of construction/*jhuggi* on a plot of land measuring 30 Sq. Yards at Sarojini Nagar, New Delhi-110023 since 05.08.1988 and he claimed that the suit property falls outside 30 Acres of land belonging to the defendant, and therefore, the defendants have no concern with the aforesaid plot of land.

5. It is further the case of the plaintiff is that his grandfather was an employee of Gwalior Potteries Limited and had been allotted quarter No. 77 which factory had been closed pursuant to the directions of High Court of Delhi dated 20.01.1997 and the said

² CPC



2024:002:3109



premises had been vacated by his grandfather. It was however claimed by the plaintiff that his grandfather had constructed the suit property, which was although in front of Quarter No. 77 but separate from it so much so that it was given a separate property No. 76 and the same is being occupied by him along with his family members since 05.01.1988. Alleging that there was a threat of forcible dispossession at the hands of the defendant No.2, he sought permanent injunction. In the said backdrop, it is admitted fact that the suit was pending, the plaintiff passed away on 29.09.2019.

6. **First things first**, since the family members have been residing with the plaintiff, it cannot be said that the right to sue was personal to the deceased or in *personam* as apparently he is claiming himself to be in possession of the subject property by way of adverse possession. Secondly, as regards the issue of abatement is concerned, indeed the application has been filed on 19.04.2022 and evidently the period prescribed period for filing the application for impleading legal heirs under Order XXII Rule 3 of the CPC expired before the lockdown period owing to COVID-19 pandemic situation since 23.03.2020.

7. Learned counsel for the petitioner in her submissions placed reliance on decision of this Court in **DLF Homes Rajapura Pvt. Ltd. v. Late O.P. Mehta**³ wherein this Court dealt with the parameters for considering an application under Order XXII Rule 3 of the CPC for setting aside the abatement of proceedings. The cited case was one where a complaint under Section 12(1) (c) of the Consumer Protection Act, 1986 was pending and on the death of the claimant, legal heirs

³ CM(M) 574/2022 decided on 11.07.2022



2024:002:3109



moved an application under Order XXII Rule 3 of the CPC and there was delay of 607, which was condoned by the NCDRC⁴. On the said order being challenged in writ jurisdiction under Article 227 of the Constitution of India, the order by the NCDRC setting aside condonation of delay of 607 days was quashed.

8. I am afraid the ratio in the aforesaid decision has no application in the present case. It is well settled that while considering an application under Order XXII Rule 3 of the CPC for substitution of legal heirs and correspondingly an application under Order XXII Rule 9 of the CPC for setting aside the abatement proceedings, the Court has to be liberal in its approach and should proceed *ex debito justitiae*. It cannot be overlooked that the legal heirs of the deceased hail from an illiterate and impoverished background and they were not able to file the application for impleading themselves as legal heirs in pending suit on account of such disadvantages; and then off-course the COVID-19 pandemic happened. By all means in view of decision of the Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020 IN RE: Cognizance for Extension of Limitation*, the period from 23.03.2020 to 28.02.2022 has to be excluded from consideration.

9. In view of the foregoing discussion, this Court finds that the learned Trial Court has committed no illegality or perversity in taking a liberal view and allowing the application setting aside abatement of the proceedings. Accordingly, the present revision petition is dismissed.

⁴ National Consumer Disputes Redressal Commission



2024:002:3109



10. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

11. The present revision petition along with pending application stands disposed of.

DHARMESH SHARMA, J.

APRIL 16, 2024

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