



\$~70

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

% ***Date of decision: 30th August, 2024***

+ CM(M) 3275/2024 & CM APPL. 49824/2024 & CM APPL. 49825/2024

KUSUM CHHETRI (DECEASED) THROUGH LRPetitioner

Through: Petitioner-in-person

versus

RAJ RANI JUNEJA (DECEASED) THROUGH LR & ANR.

.....Respondent

Through: Mrs. Farhat Jahan Rehmani, ASC with
Mr. Monis Faridi, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 49825/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3275/2024 & CM APPL. 49824/2024

1. Mother of petitioner was defending a suit for possession.
2. She unfortunately died on 10.12.2020.
3. Learned counsel for defendant no.1 appeared before the learned Trial Court on 29.01.2021 and informed the Court about the demise of defendant. Based on the aforesaid information, learned counsel for plaintiff sought time to move application under Order XXII Rule 4 CPC.
4. Thereafter, when the matter was taken up by learned Trial Court on 31.03.2021, the plaintiff apprised the Court that she was not having the details of the LRs of defendant no. 1.



5. Resultantly, notice was issued to counsel for defendant no. 1 and also to defendant no. 3.
6. Be that as it may, application in this regard was moved by the plaintiff under Order XXII Rule 4 r/w Section 151 CPC on 13.10.2022 mentioning therein that Ms. Kusum Sapna (daughter of deceased defendant no. 1) was the only surviving legal heir.
7. However, during course of the proceedings, such surviving LR informed that there were two more surviving LRs.
8. Eventually, the aforesaid application was considered by the learned Trial Court on 17.05.2024 and the same was allowed and all the three LRs of deceased defendant no. 1 were brought on record.
9. The grouse of the petitioner is limited to the effect that the application was not filed with any kind of promptness. According to her, there is delay of more than 670 days in filing such application and no application seeking condonation of delay had either been filed and, therefore, learned Trial Court should not have allowed the application as the suit stood abated, automatically, because of non-filing of any such application.
10. This Court has seen various orders passed by learned Trial Court after the demise of defendant no. 1. This Court has also gone through the reasons given in the application moved under Order XXII Rule 4 CPC in which plaintiff submitted that it was only after much chase that she was able to get the information about the LRs of deceased defendant no. 1 with the help of local persons.
11. Fact also remains that even such information was not complete as the petitioner herself had apprised the Court that there were two more LRs.
12. This Court also cannot be oblivious of the fact that during the relevant



period, there was pandemic of Covid-19 and in terms of judgment of Hon'ble Supreme Court *IN RE: Cognizance for Extension of Limitation: (2022) 3 SCC 117*, even otherwise the period falling from 15.03.2020 to 28.02.2022 was liable to be excluded.

13. Undoubtedly, plaintiff learnt about the death of mother of defendant on 29.01.2021 and the application was not moved within the stipulated period of 90 days. As already noticed above, the country was, at the relevant time, reeling under the pandemic of Covid-19. Moreover, approach of the Court, while dealing with such type of applications particularly during the aforesaid turbulent period, needs to be little liberal though at the same time, Court should be conscious of the fact that if some valuable rights accrued to the opposite side on account of default or inaction, such right should not be permitted to be defeated. All in all, the Court is required to strike a balance. It also needs to be mentioned here that even if on account of any inaction the suit abates, plaintiff can always maintain an application seeking setting aside of the abatement and the order of abatement can also be set aside if sufficient cause is shown. Here, plaintiff was not fully aware about the details of the LRs, therefore, learned Trial Court had to even issue notices to the counsel which also contributed to delay to a very large extent.

14. When asked, it was apprised by the petitioner that the case is already at the stage of defendant's evidence.

15. Be that as it may, this Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii)



Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*.

16. Keeping in mind the above, this Court is not inclined to interfere with the order impugned before this Court.

17. Petition is accordingly dismissed *in limine*.

(MANOJ JAIN)
JUDGE

AUGUST 30, 2024/dr