



2024:DHC:8064



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 14.10.2024*+ **RC.REV. 384/2018 & CM Appl.32241/2018****SHIV CHARAN**

.....Petitioner

Through: Mr. Anurag Ojha, Adv.

versus

BAL KISHAN SINGH & ANR

.....Respondents

Through: Mr. Rakesh Bhugra, Mr. M. Sufian
Siddiqui and Mr. Md. Niyazuddin,
Advs.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. Learned Counsel for the Respondents submits that he has recently came to know that the Petitioner has passed away in the year 2020. However, he submits that neither have the legal heirs of the Petitioner appeared before the Court, nor they have informed the Court about the passing away of the Petitioner. He thus, submits that the present Petition stands abated.

1.1 Learned Counsel for the Respondents also draws the attention of the Court to the order dated 27.05.2024 passed by this Court wherein the Respondents had informed the Court that the Petitioner has passed away in the year 2022.

2. Learned Counsel for the Respondents further submits that the possession of the subject premises has also been restored to the Respondents on 16.09.2022.

3. Learned Counsel for the Petitioner admits that the Petitioner has passed away, however, he is unable to clarify as to when the Petitioner has

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passed away. He is also unable to respond to the query of the Court as to on whose behalf he is appearing.

4. The legal heirs of the Petitioner have not been made a party to the present Petition despite a lapse of more than 2 years since the Petitioner has passed away. In fact, the matter has been proceeding before this Court as if the Petitioner was still alive and being represented.

5. Thus, in effect there has been no appearance on behalf of the Petitioner for several months now.

6. Order XXII Rule 3(1) of Code of Civil Procedure, 1908 (CPC) sets out that where a Plaintiff dies and the right to sue survives, the Court shall cause the legal representative of the Plaintiff to be made a party. Sub-section (2) of Order XXII Rule 3 CPC provides that in the case that no Application under Sub-rule (1) is made, the suit so far as concerns the deceased Plaintiff shall abate.

6.1 Order XXII Rule 9 (1) CPC also provides that where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action. Order XXII Rule 3 (1) CPC and Order XXII Rule 9 (3) CPC are extracted below:

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.— (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

xxx

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9. *Effect of abatement or dismissal.—*

.....

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

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[Explanation.—Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.]”

7. Limitation under Article 120 of Schedule 1(A) of the Limitation Act, 1963 [hereinafter referred to as the "Act"] upon the death of a Plaintiff/Defendant to a suit is 90 days from the date of Plaintiff/Appellant, defendant or respondent as the case may be. Article 120 of Schedule 1(A) is reproduced below:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>120. Under the Code of Civil Procedure, 1908 (5 of 1908), to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party.</i>	<i>Ninety days.</i>	<i>The date of death of the plaintiff, appellant, defendant or respondent, as the case may be.</i>

8. Order XXII Rule 1 CPC mandates that a death of a Defendant or Plaintiff shall not cause a suit to abate if the right to sue survives. Order XXII Rule 3 CPC further sets out that if the right to sue does survive then an appropriate Application to implead the legal representatives of the deceased is required to be filed within specified time - which is 90 days as per the Act. Consequently, if the party does not take appropriate steps, the right to sue does not survive and the proceedings abate *qua* the deceased.

8.1 Order XXII Rule 9(2) CPC provides for an Application for setting aside of the abatement in circumstances where the principles under Section 5 of the Act are applicable. Thus, the Applicant must show that there was



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sufficient cause for not filing the Application within the prescribed time.

9. In the present case, the Petitioner (Defendant in the Eviction Petition) passed away. However, no Application as is contemplated by Order XXII Rule 3 CPC has been made. No reason much less sufficient cause is shown by the Petitioner for the inaction. As stated above, the Petitioner is unable to give any reason for the same.

10. The Supreme Court has held that where the Application to bring on record the legal representatives of a deceased party has not been made on time and no reasons are given for the same, the Suit/Petition will stand abated. The ratio of the decision of the Supreme Court in *Balwant Singh v. Jagdish Singh*¹ is squarely applicable to the facts in the present case.

11. In view of the foregoing, the Petition and pending Application stands dismissed as abated.

12. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

OCTOBER 14, 2024/r

¹ (2010) 8 SCC 685