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

+ **FAO 161/2024 & CM APPL. 28564/2024**

**OM PRAKASH AHUJA (SINCE DECEASED) THROUGH
HIS LEGAL HEIRS**Appellant

Through: Mr. Anurag Ahluwalia, Sr.
Adv. with Mr. Keshav Sehgal,
Mr. Shivam Gaur, Mr. Kshitij
Joshi, Mr. Aryan Kumar, Advs.

versus

**KRISHAN GOPAL (SINCE DECEASED) THROUGH HIS
LEGAL HEIRS AND ORS.**Respondents

Through: Mr. Manish Sharma, Sr. Adv.
with Mr. Raveesh Thukral,
Adv. for R1&2.
Mr. Anil Gera, Adv. for R-5 to
R-8.

**CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER
28.03.2025**

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1. This appeal has been preferred by the appellants, who are the legal heirs of the deceased/plaintiff, Om Prakash Ahuja, under Order XLIII Rule 1 (c) read with Section 104 of the Code of Civil Procedure, 1908 ('CPC'), seeking to set aside the impugned order dated 15.03.2024, passed by the learned Additional District Judge-01, West District, whereby the application under Order IX Rule 4 of the CPC for the restoration of Civil Suit No.330/2016, titled as "*Om Prakash Ahuja (Since Deceased) Through Legal Heirs v. Krishna Gopa & Anr.*", was dismissed.

2. Having heard the learned senior counsel for the appellants and



learned senior counsel for the respondents, and upon perusal of the record of the present case, this Court finds no hesitation in holding that the present appeal is bereft of any merit.

3. In a nutshell, Civil Suit bearing No. CS(OS) No.1250/1979 was filed by the deceased/plaintiff Om Prakash Ahuja, on 11.10.1979 against the respondents/defendants before this Court, *inter alia*, seeking partition of the properties owned by Jawahar Mal & Sons (HUF).

4. The respondents/defendants were duly served, they filed their written statement and the issues were framed as far back as on 30.03.1983.

5. It appears that on 12.02.1995, the parties jointly sought the liberty to move an application for reference of the disputes to arbitration, which was allowed *vide* order dated 02.11.1995. Mr. M. L. Ahuja was appointed as the Sole Arbitrator to pass an award within four months of entering into the reference. However, the arbitration proceedings remained pending from 1995 to 2014 due to various factors attributable to both the parties. Despite multiple deliberations, the parties failed to reach an amicable settlement.

6. It appears that the respondents on 03.09.2014 moved an application bearing I.A. No. 18806/2014, seeking removal of the Arbitrator and fresh directions for proceeding with the trial. While the said application was pending consideration, the suit was transferred to the District Court pursuant to the enactment of the Delhi High Court (Amendment) Act, 2015, as the suit fell outside the pecuniary jurisdiction of this Court. Accordingly, the matter was transferred to the learned ADJ-01, West District, where it was listed for hearing for the first time on 12.01.2016.



7. It is evident from the record that the appellants failed to appear on several dates of hearing, despite repeated court notices issued by the learned Trial Court. Consequently, the suit was dismissed in default for non-appearance of the appellants on 25.10.2016. It is an admitted fact that the learned counsel for the respondents continued to appear during the proceedings since 2016.

8. To put it succinctly, the record of the learned Trial Court was inspected by the learned counsel for the appellant on 30.01.2018. Thereafter, an application was moved seeking restoration of the suit under Order IX Rule 4 of the CPC, read with Section 5 of the Limitation Act, 1963. The said application came to be dismissed by the learned Trial Court on 15.03.2024, which is assailed in the instant appeal.

9. At this juncture, it would be apposite to reproduce the impugned order dated 15.03.2024, passed by the learned Trial Court which goes as under:-

“1. Vide this order, this Court shall decide the application u/s 151 r/w Order 9 Rule 4 CPC and Section 5 of the Limitation Act moved on behalf of plaintiffs/applicants. By way of this application, plaintiffs/applicants are challenging the order dated 25.10.2016, whereby suit was dismissed.

2. Record perused. Arguments also have been heard.

3. In said application, it is submitted that present suit was filed by initial plaintiff against defendants before Hon'ble Delhi High Court seeking the relief of partition of suit properties, however, later due to change of pecuniary jurisdiction, same was transferred to District Court. It is submitted that plaintiffs/applicants were not having knowledge of transfer of suit to District Court and they were under impression that transfer would be notified to them in due course of time.

4. It is submitted that in last week of January 2018, one person namely Sh. Manoj Sharma approached the plaintiff/applicant Sh. Pawan Ahuja and stated that one of the suit property is available for sale as civil suit for partition had been disposed off by the



Court. After that, plaintiffs/applicants requested their counsel to find out the status of the case, however, he could not inform the status of the case to applicants/plaintiffs. After that, plaintiffs/applicants approached the new counsel and after that new counsel inspected the Court records on 05.03.2018 and 07.03.2018 and then applicants/plaintiffs came to know that after transfer of the suit from Hon'ble High Court to District Court, same was fixed for 12.01.2016 before the Court of Sh. Jagdish Kumar, Ld. ADJ, West, THC.

5. It is submitted that on 12.01.2016, the matter was further fixed for 10.03.2016 and on 10.03.2016, the Court issued Court notice to plaintiff through his counsel and fixed the matter for 06.05.2016. It is submitted that on 06.05.2016, Court issued fresh Court notice to plaintiff through his counsel for 03.06.2016 and on 03.06.2016, one Id. proxy counsel appeared for plaintiffs/applicants. It is submitted that on 03.06.2016, lawyers were on strike and therefore the Court fixed the matter for next date of hearing i.e. 17.08.2016. It is submitted that on 17.08.2016, suit was transferred from the Court of Sh. Jagdish Kumar, Ld. ADJ, West, THC to the Court of Ms. Savita Rao, Ld. ADJ-01, West, THC, however, on 17.08.2016, Ld. Presiding Officer was on leave and therefore matter was further fixed for 25.10.2016. It is submitted that on 25.10.2016, Ld. Predecessor of this Court dismissed the present suit in default and for want of prosecution as none was appearing for plaintiffs/applicants.

6. It is submitted that plaintiffs/applicants were not aware about the status of the case including the order dated 25.10.2016. It is submitted that applicants/plaintiffs did not receive any Court notice from the Court and their non-appearance was neither intentional nor deliberate. By way of present application, prayer has been made to set aside the order dated 25.10.2016 and restore the suit to its original number.

7. Perusal of record shows that initially, present suit was instituted and pending before Hon'ble Delhi High Court, however, vide order dated 27.11.2015, same was transferred to District Court due to pecuniary jurisdiction. In District Court, the suit was assigned to the Court of Sh. Jagdish Kumar, Ld. ADJ-06, West, THC, Delhi and first date of hearing before said Court was 12.01.2016. From 12.01.2016 to 25.10.2016, matter came up for hearing on several occasions and on 03.06.2016, one proxy counsel namely Sh. Rajbir appeared before Court on behalf of applicants/plaintiffs, however, after 03.06.2016, none appeared for plaintiffs/applicants. Perusal of record also shows that present application was moved on 05.04.2018 and before 05.04.2018, case file was inspected by Id. counsel for plaintiffs/applicants on 30.01.2018.



8. As per Article 122 of The Limitation Act, 1963, the period of limitation for application to restore a suit dismissed for default of appearance or for want of prosecution, the period of limitation is 30 days and same is computed/counted from the date of dismissal of the suit. It has been submitted on behalf of plaintiffs/applicants that they came to know about the status of the case when their counsel inspected the case file on 05.03.2018 and 07.03.2018 and after that present application was moved within the period of limitation. This Court is of the considered view that inspection application on record clearly reveals that case file was inspected by ld. counsel for plaintiffs/applicants on 30.01.2018 and thereby ld. counsel became aware of the status of the case, despite that present application has not been moved within the period of limitation and no reasonable explanation has been furnished for the same. Even otherwise, plaintiffs/applicants have failed to prove that they were not aware about transfer of the suit from Hon'ble High Court to District Court as on 03.06.2016, one proxy counsel appeared on their behalf. In these circumstances, it is clear that plaintiffs/applicants were not diligent in pursuing their matter and no sufficient ground has been furnished for restoration of the present matter/suit. Accordingly, present application is disallowed being devoid of merits.

9. File be consigned to Record Room after due compliance.”

10. The main plea canvassed by the learned senior counsel for the appellant was that, at most, there was a delay of 50 days in filing the application in question after acquiring knowledge of the dismissal of the suit in default upon inspection on 30.01.2018.

11. At the outset, the said plea cannot be countenanced in law for the reason that it is implausible that the appellant was unaware of the transfer of the suit from the High Court to the District Court due to the change in the pecuniary jurisdiction of this Court. A perusal of the record reveals that no appearance was entered on behalf of the appellant on 12.01.2016, and subsequently on 10.03.2016. On that date, court notices were ordered to be issued to the appellant/plaintiff through his counsel for 06.05.2016. Once again, on the said date, no appearance was made, and fresh court notices were ordered to be



issued. On 03.06.2016, no one appeared, though it is recorded that one Sh. Rajbir, proxy counsel for Sh. J. K. Bhola, Advocate, appeared for legal representative No.2 of the deceased/plaintiff. This fact has not been disputed; however, it was argued that it was merely a routine attendance during a lawyers' strike—an explanation that is neither persuasive nor acceptable. In any case, no appearance was made on 17.08.2016, and eventually, the suit was dismissed on 25.10.2016.

12. Much mileage was sought to be derived by the learned senior counsel for the appellant from the fact that the court notices were not served by the Process Server upon the LRs of the appellant and/his counsel. A perusal of the report submitted by the Process Server, placed on record, indicates that the appellant's premises were found locked on two occasions. Further, upon a visit on 03.05.2016, despite repeated ringing of the doorbell, no one came out of the house. It may be noted that not all service reports have been placed on record.

13. As a matter of law, there was no legal duty cast upon the learned Trial Court to issue any court notices as such. Yet, notices were sent for different dates of hearing. The court notices were issued merely as an abundant caution. While the process service agency in the District Courts may not be perfectly reliable, the question is why the appellants/plaintiffs were not pursuing their legal remedies diligently.

14. The pertinent question remains—what had been the appellant and, subsequently, his legal heirs been doing during the relevant period of time? It was incumbent upon the plaintiff, and upon his demise, his legal representatives, to diligently pursue appropriate legal remedies. Evidently, they failed to do so, and in such circumstances, the legal maxim *Vigilantibus non dormientibus jura subveniunt*



squarely applies, as the law aids the vigilant, not those who slumber on their rights.

15. There is complete silence regarding what the appellant, represented through his LRs, had been doing from 12.01.2016 until the inspection was conducted on 30.01.2018. Once again, the learned senior counsel for the appellant sought to argue that the delay was attributable to their previous counsel. It has become a common parlance to attribute every lapse during the course of a trial to the previous counsel, especially when such lapses prove to be detrimental to a party's interests. However, the appellant and his legal heirs are not uneducated individuals. It is apparent that they have been negligent in asserting their rights, and under such circumstances, they cannot seek latitude or equitable relief in law.

16. Lastly, it was contended that, since the suit pertains to partition, the interests of all concerned parties must be safeguarded. It was argued that, even if the appellant/plaintiff did not diligently pursue the case, the other parties should ensure a lawful division of the properties, lest the rights and contentions of all involved be perennially under a cloud.

17. In response, learned counsel for the respondents submitted that an oral partition had already taken place long before the filing of the suit, and therefore, there exists no legal imperative to proceed with the partition suit for the final determination of share, title, or interest in the subject properties. In other words, the surviving respondents have no intention to transpose themselves as the plaintiffs in the matter.

18. In view of the foregoing discussions, this Court finds that no sufficient cause has been explained by the LRs of the deceased/appellant so as to grant them any relief in law.



19. The appeal is, accordingly, dismissed. All pending applications are also disposed of.

DHARMESH SHARMA, J.

MARCH 28, 2025
Ch/Sa