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

+ **RFA 570/2007 & CM APPL. 16763/2011**

D.D.A.

.....Appellant

Through: Mr. M.K. Singh, Advocate

versus

J.K.SAHNI (PROPRIETOR) J.K.
CONSTRUCTION COMPANY

.....Respondent

Through: Mr. Pranaya Goyal, Ms. Apoorva
Kaushik and Mr. Uday Mathur,
Advocates for LR's of respondent

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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30.01.2025

CM APPLs. 47641/2024 [U/O 1 R 10(4)] & 47642/2024 (for condonation of delay)

The present applications have been moved under Order 1 Rule 10 (4) of CPC for bringing on record the legal heirs of the deceased Late J.K. Sahni on record along with an application for condonation of delay.

As per the record, late J.K. Sahni, the sole respondent expired on 24.04.2021. The record reveals that this fact was brought to the notice by the learned counsel for the respondent on 10.07.2023.

As per the case history maintained by the Registry, initial application was filed by the appellant on 11.07.2024 and after removing the objections, it was filed on 16.08.2024.

The application, on the face of it, is not maintainable and is liable to



be dismissed outrightly. The present proceedings clearly speak in volume about the way in which the proceedings are being conducted by DDA. Order 22 Rule 4(1) provides that if in case, the sole defendant dies and the right to suit survives, the court shall on the application being moved, bring the legal representative of the deceased defendant to be made a party. It is also necessary to refer that Order 22 Rule 11 specifically provides that such rules *pari materia* applies to appeals also. Article 120 of the Limitation Act provides that such application has to be moved within 90 days from the date of death. In case, such application has not been moved, Order 22 Rule 4(3) provides automatic abatement of the suit/appeal. Order 22 Rule 4(3) provides as under:-

“(3) Where within the time limited by law, no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.”

Thus, the abatement of the suit/appeal is *sine qua non* on the application being not moved for causing the legal heirs of the sole respondent on record. The legislation in its wisdom, however, provides the solution in case the death of the respondent is not known to the plaintiff/appellant, in this regard, Order 22 Rule 4(5) provides as under:-

“(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 therefore 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 for not making the application with 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.”

The bare perusal of this rule makes it clear that in case the suit abates for the result of an application having not been moved for the reason that plaintiff/appellant was ignorant of the death of the defendant/respondent, an application may be moved for setting aside the abatement. Such application has to be moved within 60 days from the abatement under Article 121 of the Limitation Act and of the plaintiff/appellant having come to know about the death of the defendant/respondent. This provision gives the discretion to the Court to condone the delay in moving an application for setting aside the abatement if the plaintiff/appellant shows sufficient cause for not making the application within a period of 60 days of abatement as provided under Article 121 of the Limitation Act. In ***DSGMC V. Jagmohan Singh & Others*** 2021 SCC Online Del 5423 this Court *inter alia* held as under:

20. The legal position that emerges from the aforesaid paragraphs is that:

- (i) Upon death of one or more defendants in a suit, the time limit prescribed under the Limitation Act for filing of application under Order XXII Rule 4 of the CPC is ninety days from the date of the death of the said defendant.*
- (ii) If the application under Order XXII Rule 4 of the CPC is not filed within the prescribed time limit of ninety days, the suit abates so far, the deceased defendant is concerned.*
- (iii) If the suit is abated against a defendant, an application under Order XXII Rule 9 of the CPC has to be filed seeking setting aside of the said abatement within sixty days from the*



date of abatement.

(iv) In case of any delay in filing application under Order XXII Rule 4 of the CPC or an application under Order XXII Rule 9 of the CPC, sufficient reasons have to be given explaining the cause of the delay in filing the aforesaid applications.

(v) The court cannot readily accept whatever a party alleges to explain his default in not moving the application for impleadment of legal heirs or the application for setting aside the abatement within the prescribed time.^[11]
(vi) Mere fact of the plaintiff coming to know of the defendant's death belatedly will not justify the delay in filing application for setting aside the abatement.

This Court in ***Deepak Verma v. Daya Anand*** C.R.P 183/2018 *inter alia* held as under:

13. In the present case, however, there was no application for setting aside the abatement of the suit or for condonation of delay in making such an application. Consequently, there was no occasion to enter into a discussion as to when the plaintiff acquired knowledge regarding the death of the original defendant. The Division Bench judgment of the Kerala High Court in State of Kerala vs. Madhavakurup Ramachandran Pillai AIR 1999 Ker 359, in paragraphs 8 and 11, clarifies that in the absence of an application for condonation of delay, the belated application for substitution of legal representatives is incompetent. If such an application is filed, the question of the plaintiff's ignorance of the death may be considered while deciding whether there was 'sufficient cause' for the delay. In the present case, a detailed discussion on the question of condonation of delay in a case of this nature is not necessary as no application for condonation of delay is on record.

The present record reveals that the factum of death of the respondent



came to the knowledge of the plaintiff/appellant on 10.07.2023. As per the record, the application was moved only on 11.07.2024. Thus by operation of law, the appeal stands abated. The applications are dismissed.

DINESH KUMAR SHARMA, J

JANUARY 30, 2025

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