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

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*Judgment reserved on: 11.12.2025**Judgment pronounced on: 09.01.2026**Judgment uploaded on: 09.01.2026*

+ RFA(OS) 20/1997, CM APPL. 10794/2019, CM APPL. 10795/2019, CM APPL. 10980/2019, CM APPL. 10981/2019, CM APPL. 56544/2025, CM APPL. 56545/2025 & CM APPL. 56546/2025

SURENDER SINGH

.....Appellant

Through: Mr. Shubhankar Sengupta,
Advocate.

versus

NEPALI DEVI & ORS

.....Respondents

Through: Mr. Rahul Sharma and Mr.
Niruikar Giri, Advocates for
Respondent No. 1.**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. By the present judgment, this Court proceeds to consider and dispose of the applications preferred by the legal representatives of the deceased Appellant under Order XXII Rules 3, 9 and 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'], seeking recall of the order dated 24.04.2009, whereby the present appeal was declared to have abated. This Bench shall further dispose of the applications filed by the wife of the Appellant seeking substitution of the legal representative of deceased Respondent No.2. A tabular



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representation of the applications and the respective prayers sought therein is presented below for clarity:

S. No.	Application Nos.	Prayer sought
1.	10794/2019	Seeking setting aside of the abatement order dated 24.04.2009 and to take on record the application filed under Order XXII Rules 3 and 11 of the CPC.
2.	10795/2019	Seeking condonation of delay of 3191 days in filing the CM App. No. 10794/2019.
3.	10980/2019	Seeking the impleadment of LR of deceased Appellant to the present Appeal.
4.	10981/2019	Seeking condonation of delay of 3215 days in re-filing the CM App. No. 10980/2019.
5.	56544/2025	Seeking impleadment of the LR of Respondent No. 2 to the present Appeal.
6.	56545/2025	Seeking condonation of delay of 763 days in filing the CM App. No. 56544/2025.
7.	56546/2025	Seeking condonation of delay of 81 days in re-filing the CM App. No. 56544/2025.

FACTUAL BACKGROUND:

2. In order to examine the issues involved in the present proceedings, it is imperative to cull out the relevant facts in brief, which are set forth hereinafter. At the outset, this Court deems it appropriate to note that the present proceedings find its genesis in a family dispute relating to the partition of several properties, in respect

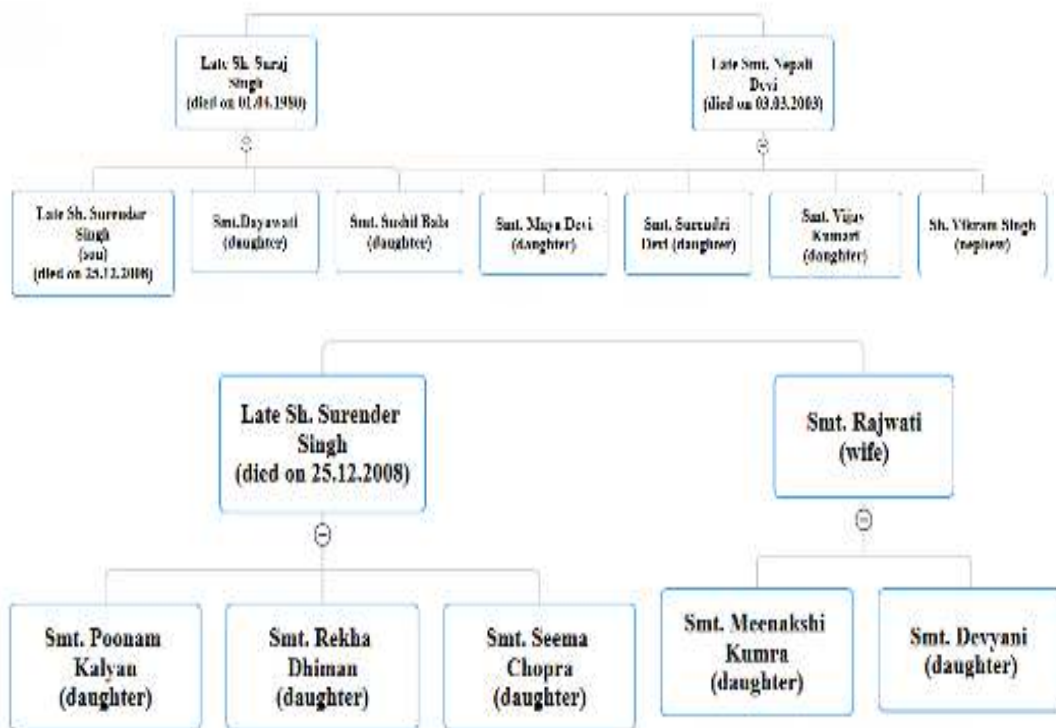
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of which an ex-parte preliminary decree came to be passed on 10.02.1997. The said decree subsequently came to be challenged by Sh. Surender Singh, the Appellant herein, by way of the present Appeal. Before delving into the aforesaid controversy, the family tree of the parties is provided hereinbelow-



3. Upon the demise of Late Sh. Suraj Singh, his widow, Smt. Nepali Devi (Original Plaintiff/Respondent No.1) instituted a civil suit seeking partition and rendition of accounts against their children, namely Sh. Surender Singh (Defendant No.1/Appellant), Smt. Dayawati (Defendant No.2/Respondent No.2), Smt. Sushil Bala (Defendant No.3/Respondent No.7), Smt. Maya Devi (Defendant No.4/Respondent No.4), Smt. Surendri Devi (Defendant No.5/Respondent No.5), Smt. Vijay Kumari (Defendant No.6/Respondent No.6) and their nephew, Sh. Vikram Singh (Defendant No.7/Respondent No.8), with respect to properties bearing



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no. 5302, 5306 and 5308 situated in Village Seelampur, Delhi; half share in property bearing no. 5304 and an extent of 195 sq yds forming part of Khasra nos. 297 and 299, both situated in the same village [hereinafter referred to as 'suit properties']. In substance, it was the case of Respondent No.1 before the Trial Court that the suit properties constituted joint/family properties, and as such she sought partition by metes and bounds, a declaration of half share in property bearing No. 5304, and rendition of accounts in respect of the income derived therefrom.

4. The Trial Court, on account of failure of the Appellant to enter appearance in the civil suit, proceeded ex-parte against him *vide* order dated 12.03.1991. Thereafter, the Court *vide* its judgment dated 11.02.1997, passed a preliminary decree for partition [hereinafter referred to as 'preliminary decree'], declaring that the parties to the civil suit were each entitled to an undivided 1/8th share in the suit properties. Simultaneously, the Court also appointed a local commissioner contemporaneously to effect partition by metes and bounds and to suggest any other appropriate mode of partition. Since, the said decree came to be challenged by the Appellant before this Court, the civil suit was adjourned *sine die* by order dated 15.10.2008.

5. The Appellant instituted the present appeal, challenging the correctness of the preliminary decree, primarily on the footing that he was a person of unsound mind and, as such, could not have been sued without the appointment of a guardian ad-litem, thereby rendering the preliminary decree a nullity. Along with the present appeal, an application also came to be filed under Order XXXII Rule 13 of the CPC, whereby this Court *vide* its Order dated 10.07.1997, while

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relying upon the medical certificate issued by the Institute of Human Behaviour and Allied Science, G.T. Road, Shahdara, and noting that the Appellant was suffering from Schizophrenia, appointed his wife, Smt. Rajwati, to act and represent him in the appeal as his guardian.

6. Undisputedly, during the pendency of the civil suit, the original plaintiff, Smt. Nepali Devi, passed away on 03.03.2003. Thereafter, her daughters, who were arrayed as Defendant nos.2 to 7 in the civil suit, were transposed as plaintiffs, the daughters having stepped into the shoes of Smt. Nepali Devi as her legal representatives (LRs) continued the suit proceedings accordingly.

7. During the pendency of the present appeal, the Appellant also passed away on 25.12.2008, leaving behind his widow, Smt. Rajwati and their daughters, namely, Smt. Poonam Kalyan, Smt. Rekha Dhiman, Smt. Seema Chopra, Smt. Meenakshi Kumra and Smt. Devyani. The record reflects that on 03.02.2009, i.e. subsequent to the death of the Appellant, his wife appeared before this Court and sought an adjournment. Be that as it may, by order dated 24.04.2009, the present appeal was treated as having abated on account of the death of the Appellant, Sh. Surender Singh.

8. Consequently, upon the abatement of the appeal, the civil suit stood revived and was relisted before the Court on 08.09.2011, whereupon notices were directed to be issued to the parties. On 23.09.2013, the civil suit was again taken up, and the matter was adjourned to 18.12.2013 for exploring the possibility of settlement between the parties. Thereafter, upon enhancement of pecuniary



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jurisdiction, the suit came to be transferred to the District Court *vide* order dated 22.01.2015.

9. In July, 2015, the LRs of Late Sh. Surender Singh [hereinafter referred to as ‘Applicants’] moved an application under Order XXXII Rule 15 read with Section 151 of the CPC, seeking to raise the plea of his alleged unsoundness of mind and to regularise their representation in that context. The said application, however, was dismissed with costs by order dated 10.11.2017. Subsequently, the Applicants filed an application under Order XXII Rule 4 read with Section 151 of the CPC, seeking their impleadment as defendants in the civil suit in place of the deceased Defendant no.1/Appellant. The said application was allowed, and by order dated 15.12.2017, the Applicants were brought on record as legal representatives of late Sh. Surender Singh in the civil suit. Along with the said application, the Applicants also tendered a written statement, accompanied by an application under Order XXII Rule 4(2) read with Section 151 of the CPC, wherein they sought to raise defences, *inter alia*, challenging the ownership and *locus standi* of the original plaintiff, Smt. Nepali Devi, with respect to the suit properties.

10. While considering the written statement and the application under Order XXII Rule 4(2) read with Section 151 of the CPC filed on behalf of the Applicants, the Trial Court came to the conclusion that permitting the same to be taken on record at that stage would, in substance, amount to reviewing or setting aside the preliminary decree, which was impermissible in law, since the said decree having attained finality insofar as determination of title and shares was concerned. It was further observed that the Applicants had, for over



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two decades, failed to cooperate in the implementation of the preliminary decree, thereby frustrating the partition proceedings, all the while continuing to enjoy the benefits of the suit properties and occasioning an inordinate delay of nearly twenty years in the culmination of the partition.

11. Accordingly, the Trial Court *vide* a final decree dated 22.12.2017, directed that the suit properties be sold by way of public auction and that the sale proceeds, after deduction of expenses, be distributed amongst the parties in accordance with their respective 1/8th shares as determined in the preliminary decree.

12. Thereafter, the Applicants filed the present applications under Order XXII Rules 3, 9 and 11 read with Section 151 of the CPC, seeking substitution of LRs and setting aside of the abatement order dated 24.04.2009.

13. It is in the aforesaid factual backdrop, comprising the ex parte preliminary decree, the subsequent abatement of the appeal filed by Late Sh. Surender Singh, the revival and culmination of the civil suit in a final decree directing sale and distribution of the suit properties, and the endeavour of the Applicants to reopen issues determined by the preliminary decree, that the controversies raised in the present proceedings fall for consideration and adjudication by this Court.

CONTENTION OF THE PARTIES:

14. This Court has heard learned counsels for the parties at length and, with their able assistance, has perused the paper book as well as the trial court record.



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15. In CM App. No. 10794/2019, learned counsel for the Applicants have argued that, after the demise of the Appellant, an application under Order XXII Rules 3 and 11 read with Section 151 of the CPC was filed on 25.03.2009 *vide* Diary No. 53762/2009, well within the prescribed period of limitation. It is their case that, despite the filing of the said application, the appeal came to be abated on account of the failure to file an application for impleadment of the LRs. It is further the case of the Applicants that owing to the settlement talks between the parties and the illiteracy of the Applicants, no application seeking restoration of the abatement order was filed.

16. It has further been argued that an appeal was preferred by the Applicants against the final decree, however, the same was objected to by the Registry on the ground that a separate appeal was required to challenge the preliminary decree. Consequently, against the aforesaid, the Applicants contend that revival of the appeal against the preliminary decree is necessary, which, in turn, requires setting aside the abatement order dated 24.04.2009. It is urged that sufficient cause exists for allowing substitution of LRs and for setting aside the abatement, so that the challenge to the preliminary decree may be adjudicated in accordance with law and in the interest of justice.

17. In addition to the aforesaid submissions, the Applicants in CM Nos. 10795/2019 and 10981/2019 have contended that the objections raised by the Registry could not be removed due to the mistake of the then clerk. It is stated that it was only in December 2018 that the son of the said clerk returned the file to the counsel.



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18. *Per contra*, learned counsel representing the Respondents argued that the Applicants have been continuously appearing before the Trial Court in the Civil Suit and has been actively prosecuting the same.

ANALYSIS:

19. Having heard the rival submissions advanced by the learned counsel for the parties and upon careful consideration of the material on record, this bench deems it appropriate to deal with the dispute at hand under two primary issues:

(I) Whether order passed on 24.04.2009 dismissing the appeal as abated is liable to be recalled?

(II) Whether the delay of 3191 days in filing the application under Order XXII Rule 9 of the CPC for setting aside abatement, and the delay of 3215 days in refiling the application under Order XXII Rules 3 and 11 of the CPC, is liable to be condoned?

20. Before moving towards the examination of the issues as set out hereinabove, this Bench deems it important to reproduce the relevant rules of Order XXII of the CPC, which are as follows:

1. No abatement by party's death if right to sue survives.—*The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.*

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.*



(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

9. Effect of abatement or dismissal.—(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

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

[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.]

**(I) WHETHER ORDER PASSED ON 24.04.2009
DISMISSING THE APPEAL AS ABATED IS LIABLE TO BE
RECALLED?**

21. Admittedly, in the present case, the application filed under Order XXXII Rule 13 of the CPC, seeking appointment of wife of the Appellant as his guardian, was allowed by this Court *vide* its Order dated 10.07.1997. The relevant paragraph of the aforesaid order is reproduced hereinbelow:

“We have seen the medical certificated produced by the appellant. This certificate has been issued by the Institute of Human Behaviour and Allied Science, G.T. Road, Shahdara, and is a certificated to the effect that Surrender Singh, son of Swaran Singh is suffering from Schizophrenia. The certificate also certifies that Surrender Singh is an out-door patient since 30.8.1986.



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In this view of the matter, we appoint his wife, the applicant, who has no interest adverse to that of her husband, as guardian of her husband.”

Pursuant thereto, Smt. Rajwati, was brought on record as the guardian (Next friend) of the Appellant. The record further reveals that subsequent to the demise of the Appellant, his wife continued to safeguard and represent his interests, both in the present appellate proceedings as well as before the Trial Court in the civil suit filed for partition and rendition of accounts. Notably, after his demise, the Applicants filed an application under Order XXII Rule 4 read with Section 151 of the CPC, seeking substitution as LR's in the said civil suit, and the same was allowed by the Trial Court *vide* order dated 15.12.2017, thereby bringing them on record as legal representatives of Late Sh. Surender Singh.

22. Against the aforesaid, reliance is placed on Order XXII Rules 1 and 3 of the CPC. Rule 1 categorically provides that a suit or appeal shall not abate where the right to sue survives, while Rule 3 (1) mandates that upon the demise of a sole plaintiff or appellant, the Court shall, on an application made in that behalf, cause the legal representative of the deceased to be brought on record and shall thereafter proceed with the suit or appeal. The basic purpose as envisaged in the aforesaid rules is to continue the civil proceedings if the right to sue survives.

23. A conjoint and purposive reading of the aforesaid provisions makes it abundantly clear that abatement is not an automatic sequitur of death but arises only where the right to sue does not survive or where, despite survival of such right, no legal representative is brought



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on record within the prescribed period, rendering the continuation of proceedings legally untenable. To put it in other words, under Order XXII Rule 3 of the CPC, the situation of abatement may arise, only upon the cumulative satisfaction of these conditions. However, in the present case none of the requisite conditions stand attracted.

24. It is pertinent to note that the present appeal arises out of a dispute pertaining to proprietary and possessory rights in immovable property, which are inherently heritable and transmissible. Such rights do not extinguish upon the death of a litigant rather they devolve upon the legal heirs by operation of law, particularly the spouse. Consequently, the right to sue survived despite the demise of the Appellant, as the cause of action pertains to proprietary rights that devolve upon his legal representatives by operation of law, more so when his wife, Smt. Rajwati, was already on record representing his estate.

25. Further, Section 2(11) of the CPC, defines a “legal representative” as a person who, in law, represents the estate of the deceased. Smt. Rajwati squarely falls within the ambit of this definition and was already validly on record. Additionally, Section 146 of the CPC statutorily enables proceedings to be continued by or against persons claiming under the original party. Thus, the continuation of the present appeal at the instance of the wife stands supported by statutory framework.

26. Having regard to the aforesaid, it is further significant that the Appellant left behind his wife and five daughters, all of whom would, in law, be his legal representatives. However, there is no mandate in

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law requiring all legal representatives to be impleaded simultaneously or immediately, especially when one of them is already on record representing the estate of the deceased. Even otherwise, a perusal of the Trial Court record reflects that none of the daughters have asserted any plea, defence or claim adverse to or divergent from that espoused by their mother, thereby ruling out any inter se conflict or competing interest amongst the legal representatives. There is no material on record to suggest any inter se conflict of interest between the legal heirs which would necessitate mandatory joinder of all of them as parties to the present appeal.

27. It is a settled principle of law that abatement is not automatic and must be construed strictly. Abatement cannot be invoked mechanically when the legal representative is already on record, and the right to sue indisputably survives. Accordingly, dismissal of an appeal as abated in such circumstances amounts to a grave procedural irregularity and defeats the ends of justice.

28. In light of the aforesaid observations, this Bench is of the view that the dismissal of the present Appeal on the ground of abatement, was, legally unsustainable and contrary to the scheme and object of Order XXII of the CPC. The right to sue having unequivocally survived, and the wife being a legal representative of the deceased Appellant having already been validly on record representing the estate, the invocation of abatement was entirely unwarranted. Consequently, the order dismissing the appeal as abated is hereby set aside.



(II) WHETHER THE DELAY OF 3191 DAYS IN FILING THE APPLICATION UNDER ORDER XXII RULE 9 OF THE CPC FOR SETTING ASIDE ABATEMENT, AND THE DELAY OF 3215 DAYS IN REFILING THE APPLICATION UNDER ORDER XXII RULES 3 AND 11 OF THE CPC, RESPECTIVELY, IS LIABLE TO BE CONDONED?

29. Upon consideration of the facts and circumstances of the present case, it is noted that the Appellant died on 25.12.2008, whereafter the Applicants made bona fide efforts to file an application under Order XXII of the CPC on 25.03.2009, well within the prescribed period of limitation of 90 days as stipulated by Article 120 of the Limitation Act, 1963 [hereinafter referred to as 'Limitation Act'], to protect and enforce their rights. It has also been their case that the application for substitution was filed on 25.03.2009 under Diary No. 53762/2009, although a perusal of the office report does not reflect a defect entry under the provided diary number, nevertheless, the record undisputedly shows that the said diary number, as claimed by the Applicants, existed at the relevant date, i.e., 25.03.2009.

30. In this regard, it becomes pertinent to highlight that where a diary number has been generated and is reflected in the official record, which *prima facie* establishes the filing of an application, notwithstanding any procedural or administrative lapses. In such circumstances, this Bench is of the view that there is a substantive filing on record and given that the dispute at hand concerns the enforceable proprietary and heritable rights of the Applicants, the delay must be assessed with the benefit of doubt in their favour, consistent with the well-settled principle that procedural lapses should not be permitted to extinguish substantive rights.



31. Order XXII Rule 9 of the CPC empowers the Court to set aside abatement if the LRs of the deceased party, or the party entitled to prosecute a claim, have been unable to comply with procedural timelines due to sufficient cause. Similarly, Order XXII Rules 3 and 11 of the CPC allow for the substitution of LRs and continuation of proceedings in the interest of justice. Section 5 of the Limitation Act, provides this Bench with a discretionary power to condone any delay in filing an application, provided sufficient cause is shown by the party filing the same.

32. In the present case, the Applicants have demonstrated a *bona fide* and *prima facie* attempt to comply with the procedural mandates prescribed under Order XXII of the CPC. The substantial delay is attributable to administrative or logistical impediments, rather than any deliberate or negligent inaction on their part. Since the cause of action relates to heritable property rights, which are substantive in nature and constitute fundamental entitlements of the legal heirs, principles of equity and justice clearly favour the condonation of such delay, ensuring that procedural technicalities do not operate to defeat substantive rights.

33. Accordingly, this Court, exercising its discretionary power under Section 5 of the CPC and the inherent powers of the Court under Order XXII of the CPC, holds that the delays of 3191 days and 3215 days, in filing the application under Order XXII Rule 9 of the CPC, and in re-filing the application under Rules 3 and 11 of the CPC, respectively, are hereby condoned. In view of the *bona fide* efforts made by the Applicants and the *prima facie* compliance with procedural formalities, they are entitled to the benefit of doubt.



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Consequently, the applications shall be treated as validly filed, thereby enabling the adjudication of the substantive rights of the Applicants without being impeded by procedural lapses.

34. Lastly, this Court takes note that Smt. Rajwati has also filed CM App. No. 56544/2025, seeking impleadment of one Smt. Amita Singh, the sole surviving legal heir of the Smt. Dayawati/Respondent No.2 who passed away on 14.12.2022. Additionally, CM App. No. 56545/2025 and CM App. No. 56546/2025 have been filed seeking condonation of delays of 763 days and 81 days in filing and re-filing the aforesaid application, respectively. Having regard to the explanations furnished in the applications, and in exercise of the Court's discretion under Section 5 of the CPC and the inherent powers of the Court, the delays are hereby condoned. The application for impleadment is accordingly allowed, as the right to sue in respect of Respondent No. 2 survives, and the substantive rights of the parties are directly impacted.

CONCLUSION:

35. Keeping in view the above position of law, as well as the facts and circumstances of the present case, the applications under consideration are allowed. The Registry is directed to restore the Appeal to its original number and list the same before the appropriate Bench for further proceedings in accordance with law.

36. Needless to state that the observations made herein are confined to the adjudication of the applications decided by this Court and shall not be construed as an expression of opinion on the merits of the



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Appeal, which are subject to be examined independently and uninfluenced by the observations made hereinabove.

37. All the pending applications shall stand disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

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