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

+ **FAO 126/2024**

**RAJ KUMAR JAIN SINCE
DECEASED THROUGH LRS**

.....Appellants

Through: **Mr. Sanjay Mishra and Mr. Satpal
Kadiyan, Advocates.**

versus

JAIN SPUN PIPE INDUSTRIES

.....Respondent

Through: **Mr. Pran Krishna Jain, Advocate.**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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19.02.2026

1. The present appeal has been filed against the order dated 13.02.2024 passed by the learned District Judge/COMM-02 (West), *Tis Hazari Courts, Delhi*, in Misc. DJ No. 127/2022.

Vide the impugned order, the Trial Court dismissed the application under Order IX Rule 9 read with Section 151 CPC along with the application under Order XXII Rule 3 CPC, thereby declining restoration of the suit which was dismissed in default on 30.11.2021.

2. Briefly stated, the background facts are that the father of the appellants was doing the business of manufacturing, trading and dealing in RRC pipes under the name and style of “*M/s. Jain Spun Pipe Co.*” and had filed the underlying suit for permanent injunction for infringement of trade mark and passing off, acts of unfair competition, counterfeiting, and damages, against the respondent.

3. On being served with summons in the suit, the respondent appeared and filed its written statement as well as the reply to the application under



Order XXXIX Rules 1 and 2, and the said application came to be dismissed on 27.02.2021. Thereafter, the matter was listed for admission/denial, settlement of issues and case management; however, due to the second wave of the Covid-19 pandemic, the case was adjourned *en bloc* and taken up next on 10.08.2021.

On 10.09.2021, learned counsel for the plaintiff informed the Court that the plaintiff as well as his wife had expired and sought time to contact the son of the plaintiff and move the appropriate application. However, on the next date of hearing, i.e., 30.11.2021, none appeared on behalf of the plaintiff, and the Trial Court dismissed the suit in default.

4. An application under Order IX Rule 9 CPC seeking restoration of the suit was moved, wherein the learned counsel for the plaintiff stated that he was otherwise engaged in *Rohini* Courts on 30.11.2021 and, despite his best efforts, had remained unsuccessful in his attempts to join the proceedings through V.C. He further submitted that he had telephonically contacted the learned opposing counsel, informed them that he had not been successful in his attempts to contact the legal heirs of the plaintiff, and accordingly requested them to ask for an adjournment. On 25.02.2022, learned counsel received a call from the deceased plaintiff's son, *Sh. Ashu Jain*, from *West Bengal* and it was only thereafter that the counsel checked the status of the case online and came to know of the dismissal, leading to the filing of the subject applications for restoration and substitution of legal heirs on 16.03.2022 and 04.03.2022 respectively.

5. The subject applications were opposed by the respondent, contending that the facts laid bare acts of negligence which could not be condoned. It was further stated that the balance of convenience lay in favour of the respondent as the plaintiff's application for interim injunction had already



been dismissed.

6. The Trial Court dismissed the subject applications, observing that although it had been claimed that the son of the plaintiff resided in *West Bengal*, no documents to support the said claim had been placed on record. It was further held that the restoration application had been filed under the signatures of only the son, *Sh. Ashu Jain*, even though the deceased was also survived by a daughter, *Smt. Ruchika Jain*. The Trial Court observed that even the application under Order XXII Rule 3 had not been signed by the daughter and there was no document on record to show that the son had been authorised by his sister to file the subject applications or appear on her behalf. The Trial Court also highlighted that the limitation periods for applications under Order XXII Rule 3 and Order IX Rule 9 CPC are 90 days and 30 days respectively. Highlighting the negligent conduct of the learned counsel, the Trial Court observed that even if the counsel had been unable to contact the legal heirs, he was expected to inform the Court and seek further time. Accordingly, the Trial Court dismissed the subject applications.

7. Before this Court, learned counsel for the appellants, while assailing the impugned order, contends that on the date of dismissal, he was engaged before *Rohini* Courts and could not be physically present, and had specifically requested the counsel for the respondent to seek an adjournment. He further contends that despite his best efforts, he could not contact the legal heirs until 25.02.2022 as the plaintiff's son was residing in *West Bengal*. He submits that the Aadhaar Card of *Sh. Ashu Jain* and a No-objection certificate from the plaintiff's daughter, *Smt. Shweta Jain* (incorrectly referred to as *Smt. Ruchika Jain* in the impugned order) have been placed on record.

8. *Per contra*, learned counsel for the respondent supports the impugned



order and submits that the appellants have failed to show any reason to interfere with the well-reasoned findings of the Trial Court, and the negligence on the part of the appellants and their counsel ought not to be condoned.

9. In light of the rival contentions, a gainful reference may be made to the settled legal position regarding the construction of “sufficient cause”. The Supreme Court in G.P. Srivastava Vs. R.K. Raizada & Ors.¹, held as follows:-

“7. ... The words ‘was prevented by any sufficient cause from appearing’ must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. ...”

10. Another gainful reference may be made to the decision of the Coordinate Bench of this Court in Sukhinder Singh & Ors. Vs. Gurbux Singh & Ors.², wherein it was held as under:-

“32. Order 9 Rule 9 of the Code, reads as under:

‘R. 9. Decree against plaintiff by defaults bars fresh suit—(1) Where a suit is wholly or partly dismissed under 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.’

33. The order of dismissal may be set aside if sufficient cause for nonappearance is shown to the satisfaction of the Court. The words ‘sufficient cause’ have got to be construed with regard to facts and circumstances of each case.

34. Supreme Court in Collector, Land Acquisition Anantnag v. Mst.

¹ (2000) 3 SCC 54

² 2009 SCC OnLine Del 2588



Katiji, (1987) 2 SCC 107 : AIR 1987 SC 1353, while interpreting the meaning of the words ‘sufficient cause’ held:

‘The expression ‘sufficient cause’ employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court.’”

11. Applying the aforementioned principles to the facts of the present case, it is observed on a perusal of the death certificates on record that the mother of the appellants passed away on 13.05.2021, and their father passed away shortly thereafter on 09.06.2021. Both parents died at medical institutes in quick succession during a period of significant turmoil, coinciding with the ‘second wave’ of the Covid-19 pandemic.

12. Furthermore, it has been specifically claimed in the restoration application that the appellants did not have knowledge about the pendency of the underlying suit at the relevant time. Given the extraordinary circumstances prevailing at the time of the deaths and the fact that the deceased plaintiff’s son was residing in *West Bengal*, the question of limitation must be viewed in light of the date of such knowledge.

13. The *Aadhaar Card* of the plaintiff’s son, *Sh. Ashu Jain*, confirming the fact of his residence in *West Bengal*, has been placed on record. Additionally, a No-objection certificate from the plaintiff’s daughter, *Smt. Shweta Jain*, renouncing her rights *qua* the underlying suit in favour of her brother, has also been filed. The deficiencies noted by the Trial Court in this regard thus stand addressed. Parenthetically, it may be noted that the Surviving Member Certificate issued by the Revenue Department, Govt. of NCT of *Delhi*, confirms the legal heirs of the deceased plaintiff to be “*Sh. Ashu Jain*” and “*Smt. Shweta Jain*”; however, the daughter has been



incorrectly referred to as “*Smt. Ruchika Jain*” in the impugned order.

14. The efforts of the counsel to establish contact with the legal heirs of the plaintiff, his communication with the counsel for the respondent regarding his inability to reach them, his attempt to join the Court proceedings through V.C., and his specific request to the opposing counsel to seek an adjournment, all reflect a *bona fide* intention to continue with the suit.

15. In view of the circumstances following the death of the original plaintiff and the prompt filing of the applications once contact was finally established with the legal heirs, this Court is of the considered view that “sufficient cause” as contemplated under Order IX Rule 9 CPC is made out in the facts of the present case. A hyper-technical approach in such matters would defeat the very purpose of the provision, which is to ensure that substantive justice is not sacrificed at the altar of procedural rigour.

16. Accordingly, the present appeal is allowed, and the impugned order is hereby set aside. The application under Order IX Rule 9 CPC is allowed and the underlying suit stands restored. The application under Order XXII Rule 3 CPC is also allowed, and *Sh. Ashu Jain* is directed to be substituted in place of the deceased plaintiff. The parties shall appear before the concerned Trial Court on 19.03.2026.

17. The present appeal is disposed of in the above terms.

18. A copy of this order be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI, J

FEBRUARY 19, 2026

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