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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 267/2023 & CM APPL. 53443/2023**
CM APPL. 53444/2023, CM APPL. 53445/2023
SURENDER KUMAR YADAV

.....Appellant
Through: Mr. S.D. Baloni and Mr. Akshat
Sharma, Advocates

versus

PHOOL CHAND (DECEASED) THR LRS AND ANR

.....Respondent
Through: Mr. Jinendra Jain, Ms. Kashish
Gupta, Mr. Manoj Gautam and Mr.
Krishna Sarma and Mr. MS Mishra,
Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
08.05.2026

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1. By way of the present appeal filed under Order XLIII Rule 1 CPC, the appellant seeks to assail the order dated 21.08.2023 passed by the learned ADJ-04, North-West District, Rohini Courts, Delhi in Misc. DJ No. 71/2020 arising out of Suit No. 177/2017 titled 'Surender Kumar Yadav v. Phool Chand & Anr.', whereby the applications filed by the appellant under Order IX Rule 9 CPC as well as under Order XXII Rule 9(2) and Order XXII Rule 4(5)(a) & (b) CPC came to be dismissed.
2. The appellant had instituted the underlying suit seeking declaration, possession, permanent injunction and consequential reliefs in respect of



property bearing Flat No. 769, Ground Floor, Pocket-6, Sector-2, Rohini, Delhi-110085 (hereinafter referred to as the “suit property”), claiming ownership on the basis of a registered Will dated 10.12.2010 allegedly executed in his favour by Late Jagat Narayan Yadav, who is stated to have been his real uncle. The appellant’s case before the Trial Court was that Late Jagat Narayan Yadav had earlier instituted proceedings against the respondents in relation to the suit property and, while dismissing the earlier suit vide judgment dated 16.12.2016, liberty had been granted to institute appropriate proceedings on the basis of title. Pursuant thereto, the present suit came to be filed by the appellant.

3. During the pendency of the suit, respondent No.1/defendant No.1 namely *Phool Chand* expired on 05.12.2018. The order sheets reveal that on 08.03.2019, the son of the deceased defendant appeared before the Trial Court and informed the Court about the death of respondent No.1 and also placed on record a copy of the death certificate. The Trial Court, while taking note of the aforesaid development, granted opportunity to the plaintiff to take appropriate steps for bringing on record the legal heirs of the deceased defendant. However, despite opportunities, no effective steps came to be taken on behalf of the plaintiff/appellant. Thereafter, on 17.07.2019 none appeared on behalf of the plaintiff and ultimately, on 19.11.2019, in view of continued non-appearance and failure to take steps for substitution of legal heirs, the suit was dismissed in default and was also treated as having abated qua deceased defendant No.1.

4. Thereafter, the appellant moved applications under Order IX Rule 9 CPC seeking restoration of the suit and under Order XXII Rule 9(2) read with Order XXII Rule 4(5)(a) & (b) CPC seeking setting aside of abatement



and bringing on record the legal heirs of deceased respondent No.1.

5. The case set up by the appellant before the Trial Court was that he is a resident of District *Pratapgarh*, Uttar Pradesh, that he had entrusted the conduct of the proceedings entirely to his earlier counsel, and that owing to lapses on the part of the said counsel, necessary steps could not be taken within time. It was further pleaded that the appellant became aware of the true status of the proceedings only upon obtaining certified copies of the judicial record in November, 2021.

6. Learned counsel for the appellant submits that the Trial Court failed to appreciate that the appellant ought not to suffer for the lapses attributable to his earlier counsel. It is submitted that substantial rights in immovable property are involved and the dispute ought to be decided on merits rather than being non-suited on technical grounds. It is further submitted that no prejudice would be caused to the respondents if the suit is restored subject to appropriate terms.

7. *Per contra*, learned counsel for the respondents supports the impugned order and submits that there was negligence on the part of the appellant in pursuing the proceedings.

8. I have heard learned counsel for the parties and perused the record.

9. The dispute between the parties pertains to immovable property rights and ordinarily, matters ought to be adjudicated on merits rather than being terminated on procedural defaults alone, unless the conduct is found to be lacking in *bona fides*.

10. It is well settled that procedural rules are intended to advance the cause of justice and not to defeat substantive rights. The Supreme Court in



Rafiq v. Munshilal¹ observed that a litigant should not ordinarily suffer for the mistake or lapse on the part of counsel. Similar principles were reiterated in N. Balakrishnan v. M. Krishnamurthy², wherein it was held that unless the conduct of a party is found to be mala fide or deliberately negligent, courts should ordinarily adopt a liberal approach while considering applications for restoration so that disputes are decided on merits.

11. It is equally well settled that a litigant should not ordinarily be made to suffer irreversibly for lapses attributable to counsel, particularly where substantial rights are involved and the opposite party can be compensated by costs. At the same time, the inconvenience caused to the respondents owing to prolonged delay cannot be ignored.

12. In the facts and circumstances of the present case, this Court is of the considered view that the ends of justice would be served if one final opportunity is granted to the appellant to contest the suit on merits, subject to payment of costs.

13. Accordingly, the impugned order dated 21.08.2023 is set aside to the extent it dismisses the application under Order IX Rule 9 CPC. The said application is allowed and the suit is restored to its original position, subject to payment of costs of Rs.25,000/- to the respondents within a period of four weeks from today.

14. The parties shall appear before the Trial Court concerned on 25.05.2026 for further proceedings. The pending applications are to be adjudicated upon by the Trial Court.

15. The appeal stands disposed of in the above terms.

¹ Rafiq v. Munshilal, (1981) 2 SCC 788

² N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123



16. Pending applications, if any, also stand disposed of.

MAY 8, 2026

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MANOJ KUMAR OHRI, J