

CS 1658/16

LALMAN Vs. SMT.PHOOL KUMARI

03.02.2024

Present : Sh. K.K. Mavai, Ld. Counsel for the plaintiffs.
Sh. Kamal Kishore, Ld. Counsel for the defendant
no. 1 and 2 alongwith defendant no.2.

After the LDOH, an application under Order XXII Rule 9 CPC r/w section 151 of CPC setting-aside abatement proceeding/suit against qua deceased defendant no.1 filed on 12.01.2024 alongwith application under Section 5 of Limitation Act filed on behalf of the plaintiff. Copy supplied.

Ld. Counsel for the plaintiff submits that the defendant no. 1 passed away on 02.02.2023 and the details such as death certificate, date of death of defendant no. 1, details of his LRs were not available with the plaintiff. It is further submitted that plaintiff is paralyzed, almost bed ridden and is not able to move properly and his wife/Smt. Vidyawati always engaged taking care of him, therefore, timely instruction could not be provided to him for taking steps in this matter after the death of the defendant no. 1. The Ld. Counsel for the plaintiff submits for aforesaid reasons application for impleadment of legal heirs of deceased defendant no. 1 could not be filed in the court within the prescribed time. It is also stated that for the similar reasons

the application under Order 22 Rule 9 of CPC could also not be filed within the prescribed time. Hence, the present application under Order 22 Rule 9 along with the application under Section 5 of the Limitation Act for condonation of delay in filing of the application under Order 22 Rule 9 of CPC.

Ld. Counsel for the defendants opposes the application.

Submission heard and record perused.

It is seen that the application for impleadment of LRs was not filed within the prescribed time, therefore, the suit qua the defendant no. 1 stood abated. It is also seen that the information such as date of death of defendant no. 1, death certificate and name and address of the legal heirs of deceased defendant no. 1 were not available to the plaintiff. Further, more importantly, the plaintiff has suffered paralysis and physically incapable, therefore, there was delay in the taking time steps regarding impleadment of LRs of the deceased defendant no. 1. There court is of the opinion that there was a sufficient cause of delay for not filing of application for impleadment of LRs of deceased defendant no. 1 within the prescribed period as well as moving application for setting aside abate qua defendant no. 1.

Therefore, the application under section 5 of the Limitation Act for condonation of delay in filing of the application under Order 22 Rule 9 of CPC is allowed. Furthermore, for the reasons mentioned above, the present

application under Order 22 Rule 9 also stands allowed and abatement of the suit qua defendant no. 1 is hereby set aside subject to a cost of Rs. 2000/- on the plaintiff to be paid to the defendant.

Now coming to the application under Order 22 Rule 2 & 4 r/w section 151 of CPC and application under Section 5 of Limitation Act that are pending disposal.

Amended memo of parties has already been filed.

However, defendant no. 2 submits that the addresses of LR's of defendant no.1 namely, Ms. Shakuntla Devi and Ms. Shanu Devi as mentioned in the amended memo of parties are not correct.

Defendant no. 2 is directed to supply the correct address of the LR's of deceased defendant no.1 to the Ld. Counsel of plaintiff.

Plaintiff is directed to file amended memo of parties with correct address of all the LR's defendant no. 1.

Upon the filing of amended memo of parties, notice of application under Order 22 Rule 2 & 4 be issued to the LR's of defendant no.1 namely, Ms. Shakuntla Devi, Sh. Shiv Kumar and Ms. Shanu Devi on filing of PF/RC, speed post and courier returnable for **22.03.2024**.

Copy of this processes be given dasti, as prayed for.

(SOMITRA KUMAR)
ADJ-06, EAST/ KKD COURTS
DELHI/03.02.2024 (s)