

08.03.2022

Present: Sh. S.K. Verma, learned counsel for plaintiff.
Ms. Neha Thakur, learned proxy counsel for Sh. Hardwari Lal for defendant no. 1,2 & 3.
Ms. Priyanka Aggarwal, learned LAC for LRs of defendant no. 4.
Sh. Sanjeev Kerwal, learned counsel for defendant no. 5.

Matter is fixed for reply on arguments on the application of plaintiff U/o 22 Rule 4 R/w Section 151 CPC for substitution of LRs of defendant no. 4.

Learned LAC for LRs of defendant no.4 submits that LRs of defendant no. 4 have no objection if the aforesaid application is allowed.

Arguments heard. Record perused.

On perusal of record, it is transpired that the suit qua defendant no.4 has already been abated automatically due to failure of plaintiff to file the application under Order XXII Rule 4 r/w Sec. 151 CPC for impleadment of Lrs of defendant no.4 within limitation period. No application seeking setting aside of automatic abatement of present suit qua defendant no.4 has also been filed.

Considering the totality of facts and circumstances and in the interest of justice, **the automatic abatement of the suit qua defendant no.4 is set aside.**

So far as application under Order XXII Rule 4 r/w Sec. 151 CPC is concerned, it is seen that the application has been filed after expiry of the limitation period. Plaintiff is entitled to the orders passed by the Hon'ble Supreme Court in SUO MOTO WRIT PETITION (CIVIL) NO : 03/20, IN RE: COGNIZANCE OF EXTENSION OF LIMITATION DATED 23.03.2020.

Right to sue survives in favour of plaintiff and against Lrs of defendant no.4. Hence, the present application under Order XXII Rule 4 r/w Sec. 151 CPC is allowed. LR of defendant no.4 are substituted in place of defendant no.4. Amended memo of parties filed alongwith the application is permitted to be taken on record.

The application of plaintiff under Order XXII Rule 4 r/w Sec. 151 CPC stands disposed off accordingly.

List for arguments on the application under Order VI Rule 17 r/w Sec. 151 CPC, on **30.05.2022**, with the connected matter.

MONA TARDI KERKETTA
ADJ01/NE/KKD/DELHI
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