

26 CS DJ 842/2014 75684/16
KAMLA DABAS ORS. Vs. BIMLA DEVI

05.02.2026

Present: Sh. D.S Lakra, Ld. Counsel for Plaintiff with plaintiff.
Sh. Vijender Kumar Gautam, Ld. Counsel for defendant with son of defendant.

Argument on application 22 rule 4 CPC along with condonation of delay application u/s 5 of Limitation Act heard on behalf of both the parties.

1. By this common order, I shall dispose of two applications moved on behalf of the plaintiffs, namely:

(i) Application under Order XXII Rule 4 read with Section 151 CPC for bringing on record the legal representatives of deceased defendant Smt. Bimla Devi; and

(ii) Application under Section 5 of the Limitation Act read with Section 151 CPC seeking condonation of delay in filing the substitution application.

2. Briefly stated, the present suit is pending adjudication before this Court and was listed for hearing on 03.09.2024. During the pendency of the suit, the sole defendant Smt. Bimla Devi expired on 17.04.2024.

3. It is averred in the application under Order XXII Rule 4 CPC that the deceased defendant is survived by the following legal heirs:

(i) Sh. Ram Dass – Son

(ii) Sh. Mangaljeet – Son

(iii) Sh. Omvir – Son

(iv) Smt. Babli – Daughter

(v) Smt. Santosh – Daughter

(vi) Sh. Rakesh-Son

All residents of V & P.O. Salahapur Majra, Delhi-81.

4. It is further stated that the right to sue survives upon the legal heirs of the deceased defendant and that there are no other legal heirs except the persons mentioned above.

5. Through the application under Section 5 of the Limitation Act, it is pleaded that the plaintiffs were not aware of the death of the defendant at the relevant time. It is stated that the plaintiffs received information regarding the death of Smt. Bimla Devi vide letter dated 31.07.2024 sent by one of her legal heirs, namely Smt. Babli, through counsel. However, the said letter did not disclose the exact date of death and merely mentioned that the defendant had expired about two months prior.

6. It is further averred that the exact date of death of the defendant came to the knowledge of the plaintiffs only on the last date of hearing i.e. 03.09.2024, and therefore, the delay, if any, in filing the application under Order XXII Rule 4 CPC is neither intentional nor deliberate.

7. Per contra, Ld. Counsel for defendant submitted that plaintiff is neighbour of defendant and plaintiffs have deliberately filed above application belatedly and therefore, same be not allowed, as delayed application was intentional.

8. I have heard the submissions and perused the record carefully.

9. It is settled law that procedural rules are meant to advance the cause of justice and not to defeat it.

9.1 At this juncture it is relevant to refer para no. 13 of judgement of Hon'ble Supreme Court in the case of *Om Prakash Gupta @ Lalloowa Vs. Satish Chandra, Civil Appeal no. 13407 of 2024* wherein Hon'ble Supreme Court has relied on the

decision in *Mithailal Dalsangar Singh Vs. Annabai Deram Kini* that:

“9. The courts have to adopt a justice oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial court Judge allowing a prayer for setting aside abatement and his finding on the question of availability of ‘sufficient cause’ within the meaning of sub-rule(2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserved to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction”.

10. In the case in hand, there is nothing on record to suggest that the delay was deliberate or malafide or there is deliberate inaction. Moreover, as discussed above and particularly in light of above judgment, court is of the view that instead of taking hypertechnical view, court should addopt a course which could further the course of justice, particularly when no prejudice will be caused to opposite party and opposite party may be adequately compensated for delay in proseuction of suit.

11. Considering the facts and circumstances of the case, and in the interest of justice, this Court is of the considered opinion that sufficient cause has been shown for condonation of delay.

12. Accordingly, the application under Section 5 of the Limitation Act read with Section 151 CPC is **allowed** and the delay, if any, in filing the application under Order XXII Rule 4 CPC is **hereby condoned**.

13. Consequent thereto, the application under Order XXII Rule 4 read with Section 151 CPC is also **allowed**, subject to payment of costs of Rs.3000/- to be paid to LR's of defendants. The legal heirs of deceased defendant Smt. Bimla Devi, as mentioned in the application, are ordered to be substituted in place of the deceased defendant, subject to filing of amended memo of parties.

14. Amended memo of parties, if already filed be taken on record otherwise it will be filed within the statutory period.

15. Applications are stand disposed of accordingly.

Ahlmad is directed to change the name of parties accordingly in the cause list in computer data.

Matter be listed for final arguments on **28.05.2026**.

(RAKESH KUMAR V)
DJ-04/North-West
Rohini Courts/Delhi
05.02.2026