

ANUPAM GUPTA AND ORS Vs. PARVEEN AGARWAL**09.09.2025**

Present: None.

1. Submissions have been heard on the application under Order 22 Rule 4 CPC. File is perused.

2. As per case record, the plaintiffs filed the present suit for recovery with the averments that financial assistance to the tune of Rs. 10 lac was provided by plaintiff no. 1 from his bank and to the tune of Rs. 10 lac from the accounts of plaintiff no. 2 and amount of Rs. 5 lac from the account of plaintiff no. 3 upon his request. The defendant returned sum of Rs. 5 lac on 06.03.2018 through bank transfer to plaintiff no. 1 and sought extension to return the balance amount within another three months. The plaintiffs got issued a legal notice dated 06.09.2019 to him upon his deliberately and intentionally closing the process of communication to avoid the demands of plaintiffs. The summons of the suit were ordered to be issued to the defendant vide order dated 06.02.2020. Thereafter, the Court was working in hybrid mode due to Covid-19 situation and upon resumption of physical working, fresh summons were issued vide order dated 30.03.2021 which were received with report "left the address". The plaintiff was granted time to take steps for service of defendant upon his request for furnishing the fresh address of the defendant.

3. The plaintiffs filed application under Order 22 Rule 4

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CPC on 02.09.2022 with the averments that plaintiff no. 1 tried his level best to trace the address of defendant but could not succeed and that guard posted at the gate of Prateek Stylone Apartments neither permitted him to enter into gated society to verify the address nor divulged any information of whereabouts of defendant to him. It is averred that recently on 20.08.2022, plaintiff no. 1 met with one of the creditors Sh. Naresh Gupta who is also a resident of Mahendru Enclave and he informed him that defendant Mr. Parveen Aggarwal has expired and his wife is living with daughter in Civil Lines. It is averred that he was unable to provide the address of daughter of defendant and that plaintiff made efforts to find out the legal heirs of deceased defendant and with great efforts, he came to know about them. The plaintiffs asked to furnish the date of death of defendant and they came up with the application under Order 22 Rule 4 and 9 r/w Section 5 of Limitation Act with the plea that with great difficulty, they came to know upon inquiry that defendant expired on 06th or 7th September 2021. It is averred that they came to know about the death of defendant on 20.08.2022 and also prayed for condonation of delay in moving the application within the specified time however they failed to seek prayer to set aside of amendment inadvertently. It is prayed that the delay in filing the application may be condoned and abatement of the suit may be set aside as the plaintiffs were completely unaware of the death of Sh. Parveen Aggarwal.

4. The application is opposed on the ground of limitation and denying the averments made by plaintiffs qua the

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efforts made by them to trace the address of defendant and thereafter about his date of death and legal heirs.

5. In the suit, the plaintiff gave two addresses of the defendant and he never took the steps for service of defendant at the address of Noida. The summons sent to the defendant at the address of Mahendru Enclave were received with report of process server that one Rakesh Kumar Gupta met who told himself as the owner and stated that Parveen Aggarwal has left the address after selling the same about four years ago. If the statement of said Rakesh Kumar is considered true, then the defendant must have been left the said address in the year 2017 itself, when the financial assistance was granted by the plaintiffs to him. Considering the loan amount, it can be deduced that plaintiffs must have been following the defendant and the fact of leaving the address by the defendant must have been in their knowledge.

6. In case titled Deepak Verma Vs Daya Nand, reported at MANU/DE/2095/2019, the Hon'ble High Court of Delhi held that *"The position which emerges from the above discussion is that the period of limitation of making an application for substitution of legal heirs of a deceased defendant begins to run from the date of death. The date upon which the plaintiff acquired knowledge of the death is not relevant for this purpose. The suit would abate as against the deceased defendant after the period of 90 days provided under Article 120 of the Limitation Act expires. However, even after this period has elapsed, the plaintiff can apply for setting aside the abatement of the suit. Although the*

period of 60 days is provided for this purpose in Article 121, any delay in making the application can be condoned if the plaintiff is able to show sufficient cause for the delay. The plaintiff's ignorance about the death of the defendant and the non-compliance with Order XXII Rule 10A of the CPC are relevant factors which would have a bearing while considering the application for condonation of delay.”

7. In case of Ram Nath Sao Vs Gobardhan Sao reported at MANU/SC/0135/2002, the Hon’ble Supreme Court observed that in a particular case whether explanation furnished would constitute “sufficient cause” or not will be dependent upon facts of each case and that there cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. It was also observed that but one thing is clear that the court should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive.

8. In case of Katari Suryanarayana & Ors Vs Koppiseti Subba Rao & Ors, Civil Appeal No. 2240 of 2009, the Hon’ble Supreme Court also considered the question involved in the present matter of setting aside of abatement and condonation of delay in applying for setting aside the abatement. The Hon’ble Court considered the principles applicable for the purpose of considering the applications to the effect that the words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words

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‘sufficient cause’ in section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.

9. When the facts of the case are read into the light of findings on the aforesaid cases, it cannot be said that the plaintiffs were deliberately applying dilatory tactics, however there are lapses on their part in pursuing the whereabouts of the defendant but the same cannot be called willful negligence. In the light of settled principles of law, taking liberal approach, the delay in approaching the court to set aside the abatement of the suit occasioned due to the death of defendant is condoned. The applications are disposed off accordingly setting aside the abatement of the suit and allowing the plaintiff to substitute the persons named in the applications as legal representative of deceased defendant. The amended memo of parties be filed.

10. The LRs of the deceased defendant may file their written statement within 30 days from today and its copy be supplied to the opposite party, so that replication, if required may be filed.

11. Put up on **25.11.2025** for completion of the pleadings and settlement of issues.

(SUNIL CHAUDHARY)
DJ-04/North-West
RHC/Delhi 09.09.2025