

**IN THE COURT OF SHIV KUMAR
ASJ-02 FTC (West) THC
(Former District Judge-02 West THC, Delhi)**

**Civ DJ No. 609115/2016
CNR NO. DLWT01-000771-2014**

Kishan Lal

..... Plaintiff

Versus

Trimal Singh & Ors.

....Defendants

ORDER

18.08.2026

1. Vide this order I shall decide the application (IA NO. 1/2024) moved on behalf of LR's of the deceased plaintiff under order XXII rule 3 read with section 151 CPC alongwith application filed under section 5 of the Limitation Act for condoning the delay in filing the application under order 22 rule 3 CPC.

2. It is averred in the application that the plaintiff has expired on 10.05.2024 at Village Barbarpur, P.O. Pawas, Distt- Etah (U.P)-207001 leaving behind the following legal heirs:

a) Satyapal
S/o late Kishan Lal
R/o Village Babarpur, P.O. Pawas
Distt Etah (U.P)-207001.

b) Phool Singh
S/o late Kishan Lal
R/o H. No. 135, Harijan Basti

Sultanpur Majra, Sultanpuri
Delhi-110086

c) Gaurav Kumar
S/o late Kishan Lal
R/o H. No. 122m Friends Enclave
Gali No. 4, Sultanpuri Road,
Delhi-110086

3. It is further averred in the application that after the death of plaintiff, right to sue survives in favour of the aforesaid legal representative of the deceased plaintiff.

4. It is further averred in the application that it is necessary for proper and just disposal of present case to implead the legal heirs of deceased plaintiff in the array of parties. It is further averred that till today the death certificate of Kishan Lal has not been prepared by the concerned department, as such, the applicants could not move the present application within stipulated time. It is further averred that the counsel for the plaintiff had instructed the applicants to get the death certificate and stated that thereafter the application under order XXII Rule 3 CPC can be moved.

5. It is further averred that the applicants are filing the present application without the death certificate of the plaintiff and they will file the same as and when they get from the concerned department.

6. It is averred in the application filed under section 5 of Limitation Act for condoning the delay in filing the application

under order 22 rule 3 CPC that the plaintiff died in a remote rural place and after finishing of the last rites and other rituals of the departed soul, the applicants herein contacted the previous counsel diligently and apprised him of the demise of the plaintiff. However, Id. counsel for the plaintiff advised the applicants to firstly get the death certificate of the deceased issued and then only the proceedings can be carried out any further. It is further averred that as such the poor applicants remained under this bona fide impression and instructed his brothers in the village as above to get the death certificate of the deceased plaintiff.

7. It is further averred in the application that brothers of the applicants are quite illiterate and despite best efforts the death certificate could not be issued to them and due to this very reason the matter got delayed. It is further averred that finding no other way out, the applicants moved the present application for bringing the legal heirs on record, without waiting for death certificate, sometime on or around 17.09.2024. It is further averred that as such a delay of around one year and 39 days has crept, which is neither deliberate nor intentional but due to above compelling reasons(s). It is further averred that unfortunately, the death certificate as above has not even so far been issued to the poor applicants.

8. It is further averred in the application that the above delay is liable to be condoned due to the reasons as outlined above. However, it is not disputed that there has not been any dereliction or deliberate delay rather it was all due to the strange and compelling reasons, which were beyond the control of the counsel

for the applicants. It is therefore prayed that this court kindly be pleased to condone the delay of one year and 39 days, in view of the compelling reasons as explained here-in-above.

9. Ld. counsel for the plaintiff has relied upon the judgment of case titled State of Haryana Vs Chandra Mani & Ors, decided on 30th January, 1996.

10. No rely has been filed on behalf of the defendants to the present application as well as application filed under section 5 of the Limitation Act.

11. Arguments heard from Ld. counsels for the parties on application filed u/o 22 rule 3 CPC as well as on condonation of delay application.

12. Ld. counsel for the LRs of deceased plaintiff submits that plaintiff has died on 10.05.2024 and the said application has been filed on the e-portal on 17.09.2024 and the delay took place for getting prepared the death certificate of the plaintiff and said death certificate could not be prepared even at the time of filing of the application. He further submits that the detailed reason for delay in filing the application has been mentioned in the condonation application here-in-above.

13. Ld. counsel for the defendants submitted that no valid reason has been given by L.Rs of the deceased plaintiff for condoning the delay in filing the application u/o 22 rule 3 CPC. He further submitted that the application under order 22 rue 3 CPC

has been filed after expiry of 90 days from the death of plaintiff, so the application is liable to be dismissed and the present suit be abated.

14. Ld. counsel for the defendants has not disputed the date of death of deceased plaintiff. The plaintiff has expired on 10.05.2024 as per averments made by the L.Rs of the plaintiff and the application under order 22 rule 3 CPC has been filed on the e-portal on 17.09.2024. The application should have been filed by 10.08.2024. So, there is delay of about 1 month and 7 days in filing the application.

15. It is settled law that the suit stands abated due to death of the plaintiff if application under order 22 rule 3 CPC not filed within 90 days from the date of death of the plaintiff. As per order 22 rule 9 CPC, the LR's of deceased plaintiff are entitled to file application for setting aside abatement within 60 days from the date of abatement of the suit. The present application has been filed within 60 days from the abatement of the suit of the plaintiff.

16. It is held by the Hon'ble High Court of Delhi in a case titled DLF Homes Rajapura Pvt. Ltd. Vs Late O.P. Mehta & Anr. In CM(M) No. 574/2022 decided on 11.07.2022, that a simple prayer for substitution of legal heirs may be treated as a prayer for setting aside of abatement having being made and the relevant paras of the judgment have been reproduced as under:-

31. From the submissions advanced by Ms. Aganihotri, the issues which arise for consideration may be identified as

(i) Whether the consumer complaint is filed by the respondents had abated, no formal application for substitution of the Legal Heirs of respondents having been preferred within the time stipulated in that regard (which would also involved the issue of whether order XX Rule 3 and 4 of the CPC were applicable in the present case).

(ii) If so, whether IA 18591/2019, for substitution of the legal representatives of the deceased respondent could suffice and be treated as an application for setting aside the abatement of the complaint.

60. While para 5 of the report in Madan Naik undoubtedly thus envisage passing of a specific order setting aside abatement, the argument is rally of no serious consequence in the present case, as the impugned order dated 18.04.2022 of the Learned NCDRC, specifically relies on para 8 to 10 of Mithailal Dalsangar Singh, while doing so, the Learned NCDRC has emphasized the finding, in the said decision, that an application for substitution of legal heirs can, in an appropriate case, be treated as an application for setting aside abatement. Besides, as I have already approved this view, the absence of any separate mention, by the Learned NCDRC, in the impugned order, that the abatement of the complaint stands set aside, would, in its true sense be a mere technicality, and cannot be regarded as fatal to the impugned order.

17. As per this judgment of the Hon'ble High Court of Delhi, even if no separate application for setting aside of abatement is filed by the legal heirs of deceased plaintiff, the prayer of setting aside of the abatement of the suit can be considered in the application for substituting the legal heirs of deceased plaintiff, if the legal heirs provided sufficient reasons for not earlier moved the application for impleadment of legal heirs within limitation.

18. I have perused the judgment of Hon'ble Supreme Court of India given in a case titled Banwari Lal (Dead) by Legal Representatives and Another V. Balbir Singh, 2016 SCC 1 607. In the said judgment the Hon'ble Supreme Court of India has held that provisions of order 22 CPC are not penal in nature. It is further held that it is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedure aspects of law. Reliance is also placed in the said judgment of another judgment of Hon'ble Supreme Court of India given by five Judge Bench, case title Sardar Amarjit Singh Kalra Vs Pramod Gupta (2003) SCC 272.

19. The reasons given by the applicants for not earlier moving the application under order 22 rule 3 CPC are that the plaintiff died in a remote rural place and after finishing of the last rites and other rituals of the departed soul, the applicants herein contacted the previous counsel diligently and apprised him of the demise of the plaintiff. However, Ld. counsel for the plaintiff advised the applicants to firstly get the death certificate of the deceased issued and then only the proceedings can be carried out any further. It is further averred that as such the poor applicants remained under this bonafide impression and instructed his brothers in the village as above to get the death certificate of the deceased plaintiff.

20. The abovesaid reasons given by the applicants for not earlier moving application under order 22 rule 3 CPC are reasonable reasons. The applicants were acting on the legal advice given to them by their counsel for firstly obtaining the death

certificate of the plaintiff and thereafter, to move application for substitution of legal heirs. There is no substantial delay in moving the present application and the delay is of about 1 month and 07 days. No intentional lapse/negligence in moving the present applications appear to be made on behalf of the applicants. The application in respect of setting aside the abatement of the suit is within 60 days from the abatement of the suit. In view of the above said facts, this Court is of the considered view that the applicants have provided the sufficient grounds for not able to file application under order 22 rule 3 within 90 days from the death of plaintiff, therefore the application filed under order 22 rule 3 CPC read with Section 151 CPC alongwith the application filed under section 5 of Limitation Act stands **allowed**, subject to cost of Rs. 2500/- to be paid to the defendants. Accordingly, abatement of the suit stands set aside and applicants are impleaded as legal representatives of deceased plaintiff in the present case.

21. IA no. 01/2024 alongwith application for condonation of delay filed under Section 5 of Limitation Act stands disposed of accordingly.

**Announced in open Court
today on 18.08.2026**

(SHIV KUMAR)
ASJ FTC -02, West
Tis Hazari Courts/Delhi
Former DJ-02, (West)
Tis Hazari Courts/Delhi