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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO 110/2020

RAJESH GUPTA

..... Appellant

Through: Ms. Chandrika Gupta,
Advocate.

versus

RAJIV OBEROI & ANR

..... Respondents

Through: Mr. Amit Sherawat, Advocate
for R-1.
Mr. Rahul Ranjan Verma,
Advocate for proposed LR.

CORAM:
JOINT REGISTRAR (JUDICIAL) SUGANDHA
AGGARWAL

ORDER

% 17.05.2023

CM No. 26529/2022 (for impleadment of LR of deceased R-2)
and CM No. 26530/2022 (for condonation of delay)

The applications are filed seeking impleadment of LR of deceased R-2. It is stated in the application that R-2 has expired on 27.04.2021 leaving behind his mother namely, Ms. Uma Oberoi as the sole surviving legal heir.

The application has been filed on 28.04.2022. It is stated in the application seeking condonation of delay that the applicant could not approach his counsel for moving appropriate application due to pandemic and, therefore, the application could not be moved within time.

Reply has been filed by the proposed LR of deceased R-2. In the said reply, no objection has raised to condonation of delay in filing the application. Further, in ***Suo Moto Writ petition (civil) no(s).***



3/2020, the Hon'ble Apex Court has held that the limitation period will be kept in abeyance till February, 2022 owing to the Pandemic.

As per Article 120 of the Limitation Act, the application seeking impleadment of LR has to be filed within 90 days from death of the party. The relevant application has been moved on 28.04.2022.

However, in view of the orders of the Apex Court, the limitation period started running from 01.03.2022 only. The present application is moved within 90 days from 01.03.2022 and hence, filed within limitation and CM bearing no. 26530/2022 is allowed.

Now the CM No. 26529/2022 is taken up for consideration. The proposed LR has submitted that the deceased R-2 was the creditor of the applicant and the judgment debtor in the execution petition wherein R-1 was the decree holder. It is submitted that orders were passed under Order 21 Rule 46A CPC appointing the applicant as a garnishee and restraining him from making the payment to deceased R-2.

However, the applicant repaid his debt by paying the amount to R-2 and accordingly learned Executing Court held that the same was not valid discharge of the loan liability. Therefore, present appeal has been filed by the applicant. It is submitted that the real dispute is between the applicant and R-1. R-2 had no role to play and after his death right to sue does not survive against his mother.

Legal representative is impleaded under order 22 CPC to represent the estate of the deceased. The issue in question is whether the payment of the amount to R-2 was a valid discharge or not. Any finding on this issue will have a bearing on the right and liability of R-2 to pay the decretal amount to the R-1.



Further, appellant has arrayed R-2 as one of the respondents in the appeal. After his demise, his LR shall be liable to fulfil the obligations attached to his estate and also to receive the benefits accruing out of the estate. Hence, the right to sue survives against the surviving LR.

In view of the above discussions, application is allowed.

Amended memo of parties already filed is taken on record.

SUGANDHA AGGARWAL
JOINT REGISTRAR
(JUDICIAL)

MAY 17, 2023/yo