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**IN THE HIGH COURT OF DELHI AT NEW DELHI
EX.F.A. NO. 12/2019**

PREM MEHANI & ANR Appellants
Through: Mr.Vardaan Bajaj, Mr. Ojusvi Sharma, Mr.
Aman Gandhi, Advocates.

versus

HARISH BATRA & ORS. Respondents
Through: Mr.Shashank Upadhyay, advocate for
respondents 1 and 2.
Mr. Dinesh Kothari, advocate for LR-Mr.Manoj Mehani,
son of deceased Respondent no.3.
Mr. Parv Garg & Mr. Pawas Kulshrestha, Advocates for
Respondent no.4.

**CORAM:
REGISTRAR MS. PANNA DUTTA**

% **ORDER**
16.12.2024

CM No.31381/2024 (Under Section 5 of the Limitation Act for condoning delay of 608 days in filing the CM No.51587/2022) in EX.F.A.No.12/2019

1. Vide this application the appellants are seeking condonation of delay of 608 days in filing CM No. 51587/2022 i.e. application under Order XXII Rule 4, CPC for impleadment of LRs of deceased-respondent no.3 (Yashpal Mehani), who expired on 31.12.2020.
2. It is stated in para 3 of the application that deceased-respondent no.3 is survived by his wife (Smt. Gyan Devi) and three sons – Mr. Prem Mehani (appellant), Mr. Satish Mehani and Mr. Manoj Mehani. In para 4 of the application it is stated that the application for impleadment was not filed within the stipulated time period on account of the settlement talks amongst the parties, few of whom are family members.



3. Learned counsel for respondent no.4 has accorded no objection in case the application is allowed.

4. Learned counsel for the respondent nos. 1 and 2 submits that arguments may be heard in the present application, at the first instance, as the applications under Order XXII, Rule 4, CPC in the present Appeal and RFA No.277/2019 were filed on the same date i.e. 26.11.2022 and delay is sought to be condoned only in the present Appeal.

5. Reply has been filed on behalf of the respondent nos. 1 and 2. Learned counsel appearing on behalf of respondents 1 and 2 submits that the application deserves to be dismissed as no **sufficient cause** has been shown by the appellants explaining the delay in filing the application under Order XXII, Rule 4, CPC for bringing on record the LRs of deceased-respondent no.3. It is contended that respondent no.3 expired on 31.12.2020 and the application was filed at belated stage i.e. in March, 2024. It is further contended that the present application was filed only after objection was raised by the respondent nos. 1 and 2.

6. It is argued that the appellants have mentioned in para 5 of the application that period from 15.03.2020 to 12.10.2021 shall be excluded for computation of limitation period, as held by hon'ble Supreme Court in **Suo Motu W.P.(C) No.3/2020 titled 'Re: Cognizance for extension of limitation'** dated 23.03.2020. In that view of the matter, the delay in moving the application for bringing on record the LRs of deceased-respondent no.3 is to be calculated from 30.03.2020 till 26.11.2022 minus the above period, as the appellants have themselves prayed/mentioned in the application. This, according to the learned counsel for the respondent nos.1 and 2 shows the conduct of the appellants and carelessness with which the application is prepared.

7. In support of his contention, learned counsel for the respondent nos. 1 and 2 relied upon para 10 of the judgment of the Supreme Court in Civil Appeal No. 1166 of 2006 titled **Balwant Singh versus Jagdish Singh & Ors** wherein the



Apex Court relying upon the case of ***Perumon Bhagvathy Devaswom vs Bhargavi Amma [(2008) 8 SCC 321]*** observed as under:

“11. 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 ‘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 bona fides, deliberate inaction or negligence on the part of the appellant.”

8. Learned counsel for the respondent nos. 1 and 2 while placing reliance on the terms “**sufficient cause**” argued that the application under Order XXII, Rule 4, CPC does not even mention as to when the appellants became aware of the death of the respondent no.3 and is devoid of any reason/ground explaining the delay. It is argued that the present application is fit for dismissal with heavy costs.

9. Learned counsel for the respondent nos.1 and 2 relies heavily on para 15 of the afore-mentioned judgment wherein the Supreme Court has observed that para 13 of ***Perumon Bhagvathy Devaswom*** (supra) enunciates the principles which need to be kept in mind while dealing with applications filed under the provisions of Order XXII, CPC alongwith an application under Section 5, Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. The same reads as under:

“15. We feel that it would be useful to make a reference to the judgment of this Court in ***Perumon Bhagvathy Devaswom*** (supra).....



“11. 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 ‘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 bona fides, deliberate inaction or negligence on the part of the appellant.”

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer’s lapses more leniently than applications relating to litigant’s lapses. The classic example is the difference in approach of courts to applications



for condonation of delay in filing an appeal and applications for condonation of delay in re-filing the appeal after rectification of defects.

(v) Want of “diligence” or “inaction” can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.”

10. Learned counsel for the appellants argued that the application under Order XXII, Rule 4, CPC for bringing on record the LRs was filed on 26.11.2022. It is submitted that the Supreme Court in ***Re : Cognizance for Extension of Limitation***, has observed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation and it is inadvertently mentioned in the application (CM 31381/2024) that exemption was from 15.03.2020 till 12.10.2021. It is submitted that 90 days limitation in filing the present application under Order XXII, CPC in fact expired on 28.05.2022.

11. It is further argued by the learned counsel for the appellants that the period of limitation expired on 28.05.2022 and the matter in the meantime was listed before the hon'ble Court on 19.07.2022 and 29.11.2022. The matter was adjourned on joint request of the parties, including the learned counsel for respondents 1 and 2, for exploring settlement. It is submitted that since the matter was getting listed on various dates for arguments, it was well within the knowledge of the respondent nos. 1 and 2 that the appellants are diligently following the case before the hon'ble Court.



12. Learned counsel for the appellants in support of his contention on the point of “**sufficient cause**” placed reliance on paras 5, 6, 8, 10, 13, 19 and 21 of **Perumon Bhagvathy Devaswon** (supra), which reads as under :

“5. x x x x x an appeal bears no brand on its forehead that it has “abated”, nor does it close itself automatically on abatement. At some stage, the court has to take note of the abatement and record that closure of the case as having abated (where the deceased was a sole respondent) or record that the appeal had abated as against a particular respondent (if there are more than one and the cause of action survives against the others). “

6. x x x x x the words ‘sufficient cause’ receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bonafides is imputable to the appellant.

7. x x x x x

8. x x x x “8. The provisions of the Code are with a view to advance the cause of justice.

.....

9. It is true, ... that it is no duty of the appellant to make regular enquiries from time to time about the health or existence [of the respondent]”

10. x x x x

“12. Thus, it becomes plain that the expression ‘sufficient cause’ within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafides is imputable to a party.....”

13. Reliance is also placed on para 26 in the case of **Sardar Amarjit singh Kalra (dead) by LRs & others versus Pramod Gupta (smt.)(dead) & others**



reported in (2003) 3 SCC 272. It is contended by the learned counsel for the appellants that the delay in filing the application under Order XXII, Rule 4, CPC is not deliberate but happened due to the fact that the matter was getting listed before the hon'ble Court on different dates for arguments amid settlement talks between the parties.

14. Heard the learned counsel for the parties. The delay in filing the application under Order XXII, Rule 4, CPC is mentioned as 608 days **whereas delay is actually 150 days :**

- (i) respondent no.3 expired on 30.12.2020 and application under Order XXII, Rule 4, CPC was filed on 26.11.2022.
- (ii) In terms of Supreme Court decision in **Re : Cognizance for Extension of Limitation**, the period from 15.03.2020 till 28.02.2022 stands excluded for the purposes of limitation.
- (iii) 90 days limitation period expired on 28.05.2022. Court vacation in June 2022 (30 days) is to be excluded.
- (iv) Total delay is 150 days.

15. It is true that the application seeking condonation of delay lack in details. Even the calculation of the period of delay is not correct. The contention of the learned counsel for the appellants that the delay occurred as settlement talks were going on between the parties, few of whom are family members (para 4 of the application) as also due to the fact that the matter was being listed before the hon'ble Court on different dates for arguments and they were diligently pursuing the case before the hon'ble Court, as is clear from the ordersheets. The actual period of delay is 150 days and from the above, it is evident that the delay is neither deliberate nor very huge/inordinate. The hon'ble Supreme Court in **N. Balakrishnan versus M. Krishnamurthy** (para 7 in **Perumon Bhagvathy Devaswom**) has observed in paras 10 and 11 as under :



“10.The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice.....

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.....

12. A court knows that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words ‘sufficient cause’ under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.....

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation.”

16. In view of the observation of the hon’ble Supreme Court that the decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation and for the reasons explained by the learned counsel for the appellants in the court today, the delay of 150 days in filing the application under Order XXII, Rule 4, CPC is condoned.

Application stands disposed of.

CM NO. 51587/2022 (Under Order XXII, Rule 4, CPC filed by the appellant to bring on record the LRs of deceased-Respondent no.3)

17. By this application the appellant is seeking to bring on record the LRs of deceased-respondent no.3 (Mr. Yashpal Mehani) being (i) Mrs. Gyan Mehani (wife), Mr. Satish Mehani and (iii) Mr. Manoj Mehani, as mentioned in para 5 of the application.



18. The application was filed on 26.11.2022. Vide Order dated 01.09.2023 and subsequent orders, repeated opportunities were granted to the learned counsel for the parties to file reply and rejoinder. On 01.09.2023, respondent no.4 - one of the partners of respondent no.5-M/s. Dayal Sales Corporation, gave his no objection in case the application is allowed and the LRs of deceased-respondent no.3 are brought on record. Reply on behalf of respondent nos. 1 and 2 was filed on 31.08.2023. Rejoinder by the appellants is not filed despite opportunities granted. Reply is not filed even by the LRs of deceased-respondent no.3.

19. In view of the application seeking condonation of delay being allowed, this application filed under Order XXII, Rule 4, CPC is allowed. One of the son/legal heirs of deceased-respondent no.3 is already on record being Mr.Prem Mehani (appellant herein). The other legal heirs of deceased-respondent no.3 (Yashpal Mehani), as mentioned in para 5 of the application, are brought on record :

Respondent No.3 (i) Mrs. Gyan Mehani (wife)
(ii) Mr.Satish Mehani (son)
(iii) Mr. Manoj Mehani (son)

20. Correct amended memo of parties be filed within five weeks.
Application stands disposed of.

**PANNA DUTTA
REGISTRAR**

16 DECEMBER, 2024