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**IN THE HIGH COURT OF DELHI AT NEW DELHI
R.F.A. NO. 277/2019**

PREM MEHANI & ANR Appellants
Through: 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. Pawan Kulshrestha, advocates for
Respondent no.4.

CORAM: REGISTRAR MS. PANNA DUTTA

ORDER
16.12.2024

**CM No.4938/2024 (Under Section 5 of the Limitation Act for condoning
delay of 50 days in re-filing the CM No.4936/2023)**

1. The application has been filed seeking condonation of delay in re-filing the application under Order XXII, Rule 4, CPC for bringing on record the legal heirs of deceased-respondent no.3 (Yashpal Mehani) and deceased-respondent no.5 (Jagdish Mehani) on the ground that the appellants could not obtain the death certificate of Mr. Jagdish Mehani (respondent no.5). The present application was filed on 24.01.2023.

2. For the reasons stated in the application, the same is allowed and the delay of 50 days in re-filing CM No.4936/2023 is condoned.

Application stands disposed of.



CM NO. 4936/2023 (Under Order XXII, Rule 4, CPC filed by the appellants to bring on record the LRs of deceased-Respondent no.3) & CM No.23827/2023 (Under Order XXII, Rule 4, CPC filed by the appellants to bring on record Mrs.Gyan Devi, wife of deceased-Respondent no.3)

3. Vide CM. No. 4936/2023 filed on 26.11.2022, the appellants are seeking to bring on record the LRs of deceased-respondent no.3 (Mr. Yashpal Mehani) who expired on 30.12.2022 and LRs of deceased-respondent no.5 (Mr. Jagdish Mehani) who expired on 11.01.2021. Vide CM No. 23827/2023 filed on 03.04.2023, the appellants are seeking to bring on record, Mrs. Gyan Devi (wife of deceased-respondent no.3).

4. In para 5 of the application, the details of LRs of deceased-respondent no.3 is mentioned : (i) Mr. Prem Mehani (appellant herein), (ii) Mr. Satish Mehani (respondent no.6 herein) and (iii) Mr. Manoj Mehani (son). In para 6 of the application, the details of LRs of deceased-respondent no.5 are mentioned: (i) Mr. Darpan Mehani (son), (ii) Ms. Rashmi Arora (daughter), (iii) Ms. Urvashi Jain (daughter) and (iv) Ms. Nisha Malhotra (daughter).

5. Learned counsel for respondent no.4, one of the partners of respondent no.5-M/s. Dayal Sales Corporation, accords his no objection if the applications are allowed and the LRs of deceased-respondent no.3 and deceased-respondent no.5 are brought on record. 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. 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 and deceased-respondent no.5.

6. Learned counsel for the respondent nos. 1 and 2 submits that the appellants have filed the application under Order XXII, Rule 4, CPC on 26.11.2022 (i.e. date of filing CM No. 51587/2022 in Ex.F.A. 12/2019). It is contended that the appellants did not even bother to file any application seeking



condonation of delay in the instant matter and instead filed only an application seeking condonation of delay of 50 days in re-filing CM No. 4936/2023 (under Order XXII, Rule 4, CPC) and that this conduct of the appellants in pursuing the case depicts negligence. It is argued that the present applications deserve to be dismissed with heavy costs as the Appeal has abated against the legal heirs of both deceased-respondent no.3 and deceased-respondent no.5 and no application for setting aside the abatement and/or condonation of delay has been filed.

7. Learned counsel for the appellants submits that in this Appeal, the application (CM.4936/2023) to bring on record the legal heirs of deceased-respondent no.3 and deceased-respondent no.5 was filed on the same date i.e. 26.11.2022, as in Ex.F.A. No.12/2019. It is submitted that since both the matters were being listed together on each date of hearing before the hon'ble Court, it was hoped that if the legal heirs of deceased-respondent no.3 were allowed to be impleaded in Ex.F.A No.12/2019, then the same consequences will follow in the present Appeal. It is further submitted that in view of this position that the appellants did not file any application seeking condonation of delay and wanted to straightaway argue on the point of delay as well. Learned counsel makes an oral prayer to condone the delay in filing the application-CM No.4936/2023 (under Order XXII, Rule 4, CPC).

9. As observed above, both the application seeking to implead the legal heirs of deceased-respondent no.3 (Yashpal Mehani) being CM No.51587/2022 in Ex.F.A. No.12/2019 and the CM No.4936/2023 in the present Appeal, were filed on 26.11.2022. The delay in filing the application for impleadment of legal heirs of deceased-respondent no.3 (Yashpal Mehani) and deceased-respondent no.5 (Jagdish Mehani) is thus actually 150 days. The explanation forwarded by the learned counsel for the appellants in not filing the application seeking delay is that both the Appeals i.e. RFA No.277/2019 and Ex.F.A. No.12/2019 were being



listed regularly before the hon'ble Court for arguments and the appellants wished to advance arguments on the issue of delay without filing an application.

10. Learned counsel for the respondent nos. 1 and 2 has argued application seeking condonation of delay in Ex.F.A.12/2019. The delay of 150 days stands condoned and the legal heirs of Mr. Yashpal Mehani have been brought on record.

11. As observed above, and in view of the appellants own conduct in not filing application under Section 5 of the Limitation Act nor any application seeking to set aside abatement despite having considerable time to move the same, making an oral prayer to condone the delay in filing application for impleadment of legal heirs in this Appeal, etc. depicts want of diligence or inaction i.e. when something is required to be done by the appellants is not done [Supreme Court in **Perumon Bhagvathy Devaswom** (supra)]. The oral prayer of the learned counsel for the appellants to condone the delay (without any formal application) in filing the CM 4936/2023, is allowed subject to payment of costs of Rs.15000/- to be paid to - "Avlamban Fund Scheme, S.B. A/c. No. 43599660056, SBI, Tis Hazari Courts (Branch Code 00726), IFSC : SBIN0000726, MICR : 110002126, within eight weeks.

12. Two of the sons/legal heirs of deceased-respondent no.3 are already on record being Mr.Prem Mehani (appellant herein) and Mr. Satish Mehani (respondent no.6 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. Manoj Mehani (son)

12. The legal heirs of deceased-respondent no.5 (Jagdish Mehani), as mentioned in para 6 of the application-CM No. 4936/2023, are brought on record:

Respondent No.5 (i) Mr. Darpan Mehani (son)
(ii) Ms.Rashmi Arora (daughter)



(iii) Ms. Urvashi Jain (daughter)
(iv) Ms. Nisha Malhotra (daughter)

14. Amended memo of parties filed along with the application is taken on record.

Applications stand disposed of.

**PANNA DUTTA
REGISTRAR**

16 DECEMBER, 2024

