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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 719/2018 & I.A. 13867/2018 I.A. 7131/2023 I.A. 3525/2025 I.A. 3526/2025 I.A. 3941/2025**

MADAN MOHAN GUPTA &ORS.

.....Plaintiffs

Through: Mr. Kumar Dushyant Singh and Ms. Subasri Jaganathan, Advocates for plaintiff nos. 1 to 3

versus

JAGRAN PRAKASHAN PUBLIC LTD. AND ANR.

.....Defendants

Through: Mr. J.V. Abhay, Ms. Maidini Phul, Ms. Prakriti Sharma, Advocates

Ms. Arunima Dwivedi, CGSC, Ms. Himanshi Singh, Mr. Sainyam Bharadwaj, Ms. Monalisha, Mr. Harpal Singh, Advocates

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 25.08.2025

I.A. 3525/2025 (Under Order XXII Rule 3 CPC to bring on record the legal representative of plaintiff no.4)

I.A. 3526/2025 (Under Section 5 of the Limitation Act for condonation of delay)

I.A. 3941/2025 (Under Order 22 Rule 9(2) CPC for setting aside abatement qua plaintiff no.4)

1. The common issue arising in this application is the substitution of plaintiff no. 4's legal representative. The applications have been filed by plaintiff nos. 1 to 3.



2. I.A. No. 3525/2025 is an application under Order XXII Rule 3 of the Code of Civil Procedure, 1908 ('CPC') on 01.02.2025 for substitution of the legal representative of plaintiff no. 4.

2.1. I.A. 3526/2025 is an application under Section 5 of the Limitation Act, 1963 ('Act of 1963') seeking condonation of 380-day delay in filing I.A. 3941/2025.

2.2. Plaintiff no. 4 unfortunately expired on 07.08.2023. However, since the plaintiff nos. 1 to 3 failed to file an application for bringing on record the legal representative of plaintiff no. 4 within the statutory period of limitation, the present suit was abated qua plaintiff no. 4 by operation of law on expiry of 90 days.

3. I.A. 3941/2025 is an application under Order XXII Rule 9(2) CPC filed by plaintiff nos. 1 to 3 on 01.02.2025 for setting aside the abatement of the present suit qua plaintiff no. 4 and for allowing the application/I.A. 3525/2025 for substitution of legal heirs of plaintiff no. 4.

4. Learned counsel for plaintiff nos. 1 to 3 states that he also represents the legal heirs of plaintiff no. 4, and these applications are also being pursued on behalf of the legal representative of plaintiff no. 4.

4.1. He states that Shri Sanjeev Mohan Gupta (plaintiff no. 4) passed away on 07.08.2023, and he is survived by his legal heirs, Mrs. Sapna Gupta (wife) and Mr. Anshuman Gupta (son), Mrs. Sapna Gupta has filed an affidavit expressing her wish not to participate in the present proceedings.

4.2. He states that following the death of plaintiff no. 4, his legal heirs were left in shock and were struggling to cope with their loss whilst trying to manage business, and legal affairs, which delayed their understanding of legal proceedings. He states that the son of Mr. Anshuman Gupta had to take



care of his mother, who was unprepared to discuss legal matters.

4.3. He states that after plaintiff no. 4's death, communication with the former counsel became difficult, and no response was received on the issue of continuing the suit;

4.4. However, the son of Mr. Anshuman Gupta has recently decided, after family discussions, to pursue the case alongside plaintiff nos. 1 to 3 and has submitted the necessary documents. He states that the delay in filing the application to set aside abatement qua plaintiff no. 4 is attributable to these circumstances and therefore, he prays that the delay in filing I.A. 3525/2025 and I.A. 3941/2025 be condoned, and Mr. Anshuman Gupta be substituted as the legal representative for the deceased plaintiff no. 4, subsequently, the abatement qua plaintiff no. 4 be set aside.

5. Learned counsel for non-applicant/defendant nos. 1 and 2 states that the application is being opposed on two grounds of (i) delay and (ii) the fact that the interest of legal representative of plaintiff no. 4 is already being duly represented by plaintiff nos. 1 to 3.

5.1. He states that the right to sue survives with the remaining plaintiff nos. 1 to 3, as they, being the lineal descendants, are claiming rights in the trade name '*Dainik Jagran*'. He further states that the surviving plaintiff nos. 1 to 3 can contest the case independently.

5.2. He states that no valid ground has been furnished for the inordinate delay of 380 days in moving the application for substitution.

5.3. He states that plaintiff nos. 1 to 3 were aware of the death of plaintiff no. 4, as is evident from the order dated 16.08.2023, and therefore there is no justification in these belated filings.

5.4. He states that the ground pleaded in the application may have



afforded some cause to the legal representatives of plaintiff no. 4 themselves, but it does not afford any cause to the plaintiff nos. 1 to 3 herein.

6. This Court has considered the submissions of the parties.

7. As noted above, plaintiff no. 4 expired on 07.08.2023; however, the application for bringing the legal heirs on record was filed belatedly on 01.02.2025, and by then the suit had abated.

8. The Supreme Court in **Mithailal Dalsanagar Singh v. Annabai Devram Kini (2003) 10 SCC 691** has held that in matters pertaining to Order XXII CPC, praying for setting aside of abatement, the Court must not adopt a pedantic approach. The relevant para reads as under:

“8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.



9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of “sufficient cause” within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction.

10. In the present case, the learned trial Judge found sufficient cause for condonation of delay in moving the application and such finding having been reasonably arrived at and based on the material available, was not open for interference by the Division Bench. In fact, the Division Bench has not even reversed that finding; rather the Division Bench has proceeded on the reasoning that the suit filed by three plaintiffs having abated in its entirety by reason of the death of one of the plaintiffs, and then the fact that no prayer was made by the two surviving plaintiffs as also by the legal representatives of the deceased plaintiff for setting aside of the abatement in its entirety, the suit could not have been revived. In our opinion, such an approach adopted by the Division Bench verges on too fine a technicality and results in injustice being done. There was no order in writing passed by the court dismissing the entire suit as having abated. The suit has been treated by the Division Bench to have abated in its entirety by operation of law. For a period of ninety days from the date of death of any party the suit remains in a state of suspended animation. And then it abates. The converse would also logically follow. Once the prayer made by the legal representatives of the deceased plaintiff for setting aside the abatement as regards the deceased plaintiff was allowed, and the legal representatives of the deceased plaintiff came on record, the constitution of the suit was rendered good; it revived and the abatement of the suit would be deemed to have been set aside in its entirety even though there was no specific prayer made and no specific order of the court passed in that behalf.”

(Emphasis supplied)

9. This Court has heard the submissions of the parties. The non-applicants/defendants do not dispute that the right to sue survived to the



legal representative of plaintiff no. 4. The defendants concede that the suit against the defendants shall continue at the behest of plaintiff nos. 1 to 3, even if the substitution is not allowed. It is thus apparent that allowing these applications and permitting substitution will not cause any prejudice to the non-applicants/defendants.

10. This Court has perused the reasons set out in these applications filed by the plaintiff nos. 1 to 3 for not filing the application for setting aside the abatement qua plaintiff no. 4, within the statutory period and seeking a condonation of delay. The counsel representing the legal heir of plaintiff no. 4, has set out the personal hardships faced by legal representative during this period due to the financial and emotional hardships in his family.

11. In the present suit plaintiff nos. 1 to 3 and deceased plaintiff no. 4 were claiming proprietary rights to the trade name '*Dainik Jagran*'. Therefore, the proprietary rights of deceased plaintiff no. 4 will be jeopardized and lost if his legal heirs are not permitted to prosecute the suit.

12. Considering the view of the Supreme Court in **Mithailal Dalsanagar Singh** (supra), this Court is satisfied that the delay in filing the application in the facts of the present case was not deliberate or a dilatory tactic on behalf of the plaintiff nos. 1 to 4, and the applicants have shown sufficient cause for condonation. The legal representative of plaintiff no. 4 has adopted the trade name '*Dainik Jagran*', the application preferred by them, coupled with the hardship pleaded, constitutes sufficient cause for condoning the delay.

13. Since there is no allegation by defendant nos. 1 and 2, that the delay caused by the applicants is malafide or deliberate. In view of the aforesaid, the delay caused in filing the application for setting aside the abatement and the delay in substitution of legal representative of plaintiff no. 4 is



condoned, keeping in view the averments made in application qua the hardships of the counsels and defendant nos.1 and 2, can be compensated with costs. The abatement of the suit qua plaintiff no. 4 is hereby set aside, and his legal heir, Mr. Anshuman Gupta is hereby substituted in the present suit as plaintiff no. 4, against the late Shri Sanjeev Mohan Gupta i.e., plaintiff no. 4 herein.

14. The plaintiffs are directed to file an amended memo of parties within two (2) weeks.

15. Accordingly, the captioned applications are allowed, subject to payment of costs of Rs. 10,000/- to Delhi High Court Legal Services Committee within four (4) weeks.

I.A. 13867/2018

16. Learned counsel for the plaintiff nos. 1 to 3 states that he has instructions to withdraw this application.

17. The application is dismissed as withdrawn.

I.A. 7131/2023

18. List the present application for hearing and disposal on **14.11.2025**.

MANMEET PRITAM SINGH ARORA, J
AUGUST 25, 2025/mt/AM