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

+ **CS(OS) 915/2009 & I.A. 11341/2026**

SHRI SHIVRAJ GUPTA AND ANOTHERPlaintiffs

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Ankur Mahindro, Mr. Shresth Choudhary, Mr. Rohan Taneja and Mr. Raghav Kalra, Advs for P-2.

versus

HANSRAJ GUPTA & CO. PVT. LTD.Defendant

Through: Ms. Prarthana Singhania, Adv. for Defendant.
Mr. Rajshekhar Rao, Sr. Adv. with Mr. Nitish Chaudhary, Ms. Anandita Rana, Advs for Applicants - Daughters/Proposed LR's of Plaintiff No.1 (Shivraj Gupta).

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **29.04.2026**

I.A. 12073/2026 & I.A. 12074/2026 & I.A. 11340/2026

1. I.A. 12073/2026 has been filed under Order XXII Rule 3 of CPC read with Section 151 of CPC by the Applicants seeking impleadment and substitution as the Legal Representatives of the deceased Plaintiff No.1 – Late Sh. Shivraj Gupta.
2. I.A. 12074/2026 has been filed under Section 5 of the Limitation Act read with Section 151 of CPC by the Applicants seeking condonation of delay of 1362 days in filing the I.A. 12073/2026 which is for seeking impleadment and substitution as the Legal Representatives of the deceased



Plaintiff No.1 – Late Sh. Shivraj Gupta.

3. I.A. 11340/2026 has been filed by Plaintiff No.2 under Section 151 of CPC seeking withdrawal of the present Suit.

4. The instant Suit has been filed by the Plaintiffs seeking specific performance of the Agreement to Sell dated 24.12.2008 in respect of the property bearing Khasra Nos. 53-20/2, 21/1, 54- 16/1, 25/2, 68/27, 80-6, 7, 14, 15/1, 16/2, 17, 8/1, 13/2, 18/1, 27, 28 total of 16 Kita and having area of 44 Bigha, 17 Biswas, located at Village Bijwasan, Tehsil Vasant Vihar, District South West, New Delhi-110037 (*hereinafter referred to as 'the Suit Property'*) and for other reliefs. The said Suit Property consists of a Farm House.

5. Plaintiff No.1 is the son of Plaintiff No.2. The Defendant/Company is a closely held family Company which is the owner of the Suit Property. Late Mr. Hansraj Gupta is grandfather of Plaintiff No.2 and father of Plaintiff No.1.

6. During the pendency of the Suit, the Plaintiff No.1 passed away on 02.05.2021 and he was survived by the Plaintiff No.2, who is the son, as well as two daughters who are Applicants herein in I.A. 12073/2026 & I.A. 12074/2026.

7. Plaintiff No.2 had filed an I.A. 4923/2022 for recording that the right of Plaintiff No.1 is survived in favour of Plaintiff No.2 and also for permission to proceed with the Suit.

8. It is pertinent to mention that the Plaintiff No.1 left behind a registered Will dated 25.09.2007 as well as an unregistered Addendum Will dated 13.03.2008. Though it is stated in I.A. 4923/2022 that the Will in question is uncontested, however, it is pertinent to mention that the said Will



is a subject matter of another suit bearing CS SCJ No. 1026/2022, which has been filed by the sisters (daughters of the deceased Plaintiff No.1 and Applicants in I.A. 12073/2026 & I.A. 12074/2026), before the learned Senior Civil Judge, South East District, Saket Courts, Delhi.

9. I.A. 12073/2026 has been filed by the Applicants nearly after 05 years after the demise of Plaintiff No.1. It is the contention of the Applicants that on the demise of Plaintiff No.1, they should also have been impleaded in the array of Parties as they are also beneficiaries in the Will dated 25.09.2007 as well as an unregistered Addendum Will dated 13.03.2008. It is stated that it was the duty of the Plaintiff No.2 to record the Applicants' name also as Legal Representatives of Plaintiff No.1 which the Plaintiff No.2 has failed to do so. It is stated that Plaintiff No.2 was being acting and will act against the Applicants' interest and, therefore, it is necessary for them to get themselves impleaded as Legal Representatives of Plaintiff No.1 in the array of Parties.

10. Along with I.A. 12073/2026 for getting themselves impleaded as Legal Representatives of Plaintiff No.1, the Applicants have also filed an I.A. 12074/2026 seeking condonation of delay of 1362 days in filing the I.A. 12073/2026. Paragraph Nos.4 to 6 of the I.A. 12074/2026 are reproduced as under:

“4. It is the Applicants' apprehension that due to the ongoing disputes between Plaintiff No. 2/Jayant and the Applicants, Plaintiff No.2/Jayant will continue to act against the interests of the Applicants and unjustly enrich himself from the estate of Plaintiff No. 1/SRG and therefore the Applicants are being constrained to file the accompanying application at this stage.

5. It is submitted that since Late Shivraj Gupta passed away on 02.05.2021, in terms of Order dated



10.01.2022 passed by the Hon'ble Supreme Court in re: cognizance for extension of limitation, the period for filing the accompanying application expired on 30.05.2022. a delay of approx. 1362 days has occasioned in filing the accompanying application. However, no prejudice will be caused to any party if the accompanying application is allowed as P2's Sole Impleadment Application has not yet been heard and adjudicated, and pursuant to the accompanying Application, the matter of impleadment of all of Plaintiff No.1 /SRG legal representatives can be decided at once.

6. Accordingly, the present application is filed seeking condonation of delay of approx. 1362 days in filing the accompanying application.

7. That the delay caused has been unintentional and due to the peculiar facts and circumstances of the matter as elaborated above. That the delay that has been caused is deeply regretted and it is reiterated that the same was neither deliberate nor intentional, and as such it is prayed that the same may be condoned by this Hon'ble Court in the facts and circumstances of the matter.”

11. Learned Senior Counsel appearing for the Applicants contends that the Applicants are Legal Representatives of Plaintiff No.1. It is stated that there are disputes regarding interpretation of Will in question which is the subject of matter of a separate proceedings initiated by the Applicants herein and therefore, the Applicants should be impleaded in the array of parties. It is also stated that Plaintiff No.2 has already filed an application being I.A. 11340/2026 seeking withdrawal of the present Suit and if the said application is allowed without impleadment of the Applicants, valuable



rights of the Applicants will be defeated.

12. *Per contra*, learned Senior Counsel appearing for the Plaintiff No.2 states that Plaintiff No.2, who is the *dominus litis*, wants to withdraw the present Suit. It is stated that there is nothing to show that the Applicants have any right in the Suit Property which is the subject matter of the present Suit.

13. Heard learned Counsel appearing for the Parties and perused the material on record.

14. The Applicants have not stated anything which indicates that the Will in question gives any right to the Applicants in the Suit Property. What is the right of the Applicants in the Agreement to Sell has also not been crystallized. Further, Plaintiff No.1 passed away on 02.05.2021. The date of demise of Plaintiff No.1 was known to the Applicants who are daughters of Plaintiff No.1 and they did not file any application at that time to get themselves impleaded as LR's of Plaintiff No.1. The application filed by the Applicants do not give any reason as to why the Applicants have not come forward despite knowing that Plaintiff No.2 alone has filed I.A. 4923/2022 wherein it was prayed that only Plaintiff No.2 has interest in the Suit Property.

15. In the absence of any reason as to why the Applicants have kept quiet for a substantial period of 1362 days in getting themselves impleaded or substituted in the Suit as LR's of Plaintiff No.1, this Court is not inclined to condone the delay 1362 days. In fact the delay is more than 1362 days, however, in view of the Judgment of the Apex Court in Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117, the delay of 1362 days has been calculated for which no reasonable explanation has been given.



16. Article 120 of the Limitation Act states that if an Application to bring on record the Legal Representatives of a party on their death is not filed within 90 days of the death of the party, then the Suit abates. Moreover, law relating to condonation of delay in filing an Application under Order XXII Rule 3 of the CPC to bring on record the Legal Representatives of a party on their death during the pendency of a Suit is well settled. Reference is made to the law laid down by the Apex Court in the judgment of Om Prakash Gupta v. Satish Chandra, **2025 SCC OnLine SC 291**, relevant paragraphs whereof are reproduced to read as under:

“11. Rule 1 of Order XXII, CPC provides that when a party to a suit passes away, the suit will not abate if the right to sue survives. In instances where the right to sue does survive, the procedure for bringing on record the legal representative(s) of the plaintiff/appellant and the defendant/respondent are provided in Rules 3 and 4, respectively, of Order XXII. The suit/appeal automatically abates when an application to substitute the legal representative(s) of the deceased party is not filed within the prescribed limitation period of 90 days from the date of death, as stipulated by Article 120 of the Limitation Act, 1963. It could well be so that death of a defendant/respondent is not made known to the plaintiff/appellant within 90 days, being the period of limitation. Does it mean that the suit or appeal will not abate? The answer in view of the scheme of Order XXII cannot be in the negative. In the event the plaintiff/appellant derives knowledge of death immediately after the suit/appeal has abated, the remedy available is to file an application seeking setting aside of the abatement, the limitation wherefor is stipulated in Article 121 and which allows a period of 60 days. Therefore, between the 91st and the 150th day after the death, one has to file an application for setting aside the abatement. On the 151st day, this



remedy becomes time-barred; consequently, any application seeking to set aside the abatement must then be accompanied by a request contained in an application for condonation of delay under Section 5 of the Limitation Act in filing the application for setting aside the abatement. Thus, the total time-frame for filing an application for substitution and for setting aside abatement, as outlined in Articles 120 and 121 of the Limitation Act, is 150 (90 + 60) days. The question of condonation of delay, through an application under Section 5 of the Limitation Act, arises only after this period and not on the 91st day when the suit/appeal abates. From our limited experience on the bench of this Court, we have found it somewhat of a frequent occurrence that after abatement of the suit and after the 150th day of death, an application is filed for condonation of delay in filing the application for substitution but not an application seeking condonation of delay in filing the application for setting aside the abatement. The proper sequence to be followed, therefore, is an application for substitution within 90 days of death and if not filed, to file an application for setting aside the abatement within 60 days and if that too is not filed, to file the requisite applications for substitution and setting aside the abatement with an accompanying application for condonation of delay in filing the latter application, i.e., the application for setting aside the abatement. Once the court is satisfied that sufficient cause prevented the plaintiff/appellant from applying for setting aside the abatement within the period of limitation and orders accordingly, comes the question of setting the abatement. That happens as a matter of course and following the order for substitution of the deceased defendant/respondent, the suit/appeal regains its earlier position and would proceed for a trial/hearing on merits. Be that as it may.”



17. Keeping in mind the aforesaid principles and in the absence of any cogent reasons explaining the delay in filing I.A. No.12073/2026, this Court is not inclined to allow I.A. No.12074/2026, more particularly when the right of the Applicants to continue with the present Suit is yet to be crystallized. Needless to state, as and when CS SCJ No. 1026/2022 is decided, it will be open for the Applicants to file a fresh Suit in accordance with law.

18. In this view of the matter, this Court is not inclined to condone the delay of 1362 days in filing I.A. No.12073/2026.

19. Accordingly, both the Applications being I.A. No.12073/2026 & I.A. No.12074/2026 are dismissed.

20. I.A. No.11340/2026 has been filed by Plaintiff No.2 seeking unconditional withdrawal of the present Suit. Plaintiff No.1 passed away on 02.05.2021.

21. This Court does not find any reason as to why I.A. No.11340/2026 ought not to be allowed. I.A. No.11340/2026 stands allowed.

22. Accordingly, the Suit is disposed of as withdrawn, along with the pending application(s), if any.

23. Next date of hearing, if any, stands cancelled.

SUBRAMONIUM PRASAD, J

APRIL 29, 2026

Rahul/ S.Zakir