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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision : 10.04.2026**

+ O.M.P. 1413/2014, I.A. 8288/2018 (For modifications of orders 23.02.2015) &amp; I.A. 11517/2018 (For Delay 44 days in filing the Reply by the petitioner to I.A. No. 8288/2018)

V K NAYAR

.....Petitioner

Through: Mr. Mrityunjay Kumar,  
Advocate for P-1(A) & P-1(C).

versus

G P NAYAR &amp; ANR

.....Respondents

Through: Mr. M.C. Dhingra, Senior  
Advocate along with Mr.  
Gaurav Dhingra and Mr.  
Shashank Singh, Advocates for  
R-1(B).**CORAM:****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

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**JUDGEMENT (ORAL)****I.A. 17435/2022 (U/O XXII Rule 4 & 9)**

1. The present Application has been preferred by the Legal Heirs of the deceased Petitioner under Order XXII Rules 4 and 9, read with Section 151 of the **Code of Civil Procedure, 1908<sup>1</sup>** and Section 5 of the **Limitation Act, 1963<sup>2</sup>**, seeking setting aside of the abatement of the proceedings against Respondent No. 1 and for bringing on record the legal heirs of the deceased Respondent No. 1. A consequential prayer has also been made for taking on record the amended Memo of Parties.

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<sup>1</sup> CPC<sup>2</sup> Limitation Act



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2. Before proceeding further, it is apposite to briefly set out the factual matrix relevant for the purposes of the present adjudication, which is as follows:

- (a) The disputes between the parties were adjudicated through arbitration, which was initiated at the behest of the original Petitioner, Late Shri V.K. Nayar, and culminated in the filing of a petition under Section 34 of the Arbitration and Conciliation Act, 1996, being *O.M.P. No. 1413/2014*, by him challenging the Arbitral Award dated 18.07.2014.
- (b) During the pendency of the said petition, Respondent No. 1, Late Shri G.P. Nayar, expired on 19.03.2021.
- (c) It is not in dispute that no application for bringing on record the **Legal Representatives**<sup>3</sup> of the deceased Respondent No. 1 was filed within the prescribed period of limitation, as a result, whereof the proceedings, insofar as against Respondent No. 1 are concerned, stood abated. Further, no application was filed by the original Petitioner for setting aside the abatement within the statutorily prescribed period of 60 days, which is from the date of abatement.
- (d) Subsequently, the original Petitioner, Shri V.K. Nayar, passed away on 30.06.2022. Thereafter, his Legal Heirs filed an Application on 18.08.2022, to bring themselves on record, being *I.A. No. 15603/2022*, which came to be allowed *vide* Order dated 17.03.2023 passed by this Court.
- (e) However, the present Application, being *I.A. No. 17435/2022*, came to be filed on 21.09.2022 by the Legal Heirs of the

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<sup>3</sup> LRs



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deceased Petitioner under Order XXII Rules 4 and 9 read with Section 151 of the CPC and Section 5 of the Limitation Act, *inter alia*, seeking the setting aside of the abatement of the proceedings against Respondent No. 1 and for bringing on record the Legal Heirs/Representatives of the deceased Respondent No. 1.

- (f) *I.A. No. 17435/2022* was filed along with *I.A. No. 17436/2022*, the latter being an application under Section 5 of the Limitation Act read with Section 151 of the CPC, seeking condonation of a delay of 54 days in filing *I.A. No. 17435/2022*.
- (g) *I.A. No. 17436/2022* was allowed by this Court *vide* Order dated 23.12.2025.
- (h) In *I.A. No. 17435/2022*, which is under adjudication presently, the Applicants have attributed the delay in filing the substitution application and in seeking to set aside the abatement *qua* Respondent No. 1 to the prolonged illness of the original Petitioner. It is averred that the original Petitioner was suffering from a serious medical condition, *viz*, Stage IV brain cancer, and was, during the relevant period, not in a position to effectively instruct counsel or take necessary steps for prosecuting the matter.
- (i) The Application is opposed by the proposed LR's of the deceased Respondent No. 1, who have filed a reply opposing the grant of relief. It is contended that the delay in seeking substitution is inordinate and remains unexplained, both during the lifetime of the original Petitioner and thereafter. It is further alleged that the plea of medical incapacity is incorrect and is



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belied by the conduct of the original Petitioner during the relevant period.

- (j) The proposed LRs of the deceased Respondent No. 1 have also contended that the original Petitioner had knowledge of the death of Respondent No. 1 and, despite such knowledge, failed to take steps within the period prescribed by law, resulting in abatement of the proceedings. It is their case that no sufficient cause has been made out for setting aside the abatement of the proceedings against the deceased Respondent No. 1.

3. In the aforesaid backdrop, the present Application for setting aside the abatement and for bringing on record the Legal Heirs/ Representatives of the deceased Respondent No. 1 necessitates adjudication by this Court.

**SUBMISSIONS ON BEHALF OF THE PARTIES:**

4. Learned Counsel appearing on behalf of the Applicants/ Petitioner Nos. 1(A) and 1(C) submits that, although the present Application has been filed after a considerable delay, the same deserves to be allowed in the peculiar facts and circumstances of the case. It is submitted that the delay is neither deliberate nor intentional, but occasioned due to circumstances beyond the control of the deceased Petitioner.

5. It is contended that the deceased Petitioner was suffering from a grave and terminal medical condition, which severely impaired his physical and cognitive abilities and rendered him incapable of effectively instructing counsel or pursuing the present proceedings within the prescribed period of limitation.

6. In support of the aforesaid submission, learned Counsel has



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drawn the attention of this Court to the detailed medical history placed on record along with the Application, delineating the progressive deterioration in the health condition of the deceased Petitioner, including diagnosis of a high-grade malignant brain tumour, multiple surgical interventions, radiotherapy, and subsequent complications, which persisted till his demise on 30.06.2022.

7. The said medical record, as tabulated in the Application and supported by contemporaneous medical documents, reflects continuous and severe medical incapacity. The relevant portion of the Application delineating the tabular format of the medical history of the deceased Petitioner is reproduced herein below:

“5. That this Application is being filed under Order XXII Rule 9(2) and Rule 4(5)(b) of the Code of Civil Procedure, 1908 read with Section 5 of the Limitation Act, 1963. That there is sufficient cause for not filing the Application for substitution of Legal Heirs of the Respondent No. 1. The delay has been caused on account of the poor health and precarious medical condition of the Petitioner, who ultimately expired on 30.06.2022. In the month of August 2020, the Petitioner complained of severe headache, loss of left eye vision and disorientation with imbalance. Subsequently, various tests were done and it came out that the Petitioner was suffering from Stage IV Brain Cancer. The Petitioner undertook External Beam Radiotherapy to fight with cancer. However, the Petitioner’s Brain Cancer kept on getting worse and he could not survive the brain cancer. The Petitioner underwent brain surgery in the month of September 2020, which included craniectomy, lobectomy and excision of tumor. The Petitioner underwent the following tests and scans which are indicative of the progression and extent of the Brain Cancer:

Date	Doctor/ Hospital	Type of Test/ Diagnostic Centre	Reports Prescriptions/Comments
18.08. 2020	Dr. Satish Jain	MRI Dr. Gulati Imaging Institute, Hauz Khas Enclave,	Suggestive of mitotic etiology (presence of dividing/proliferating cells) with intralesional vascularity, high grade glioma (a tumor that occurs in the brain and spinal



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		New Delhi	cord), metastases (spread of a tumor or cancer to distant parts of the body from its original site).
21.08.2020	Dr. (Prof.) V.K. Jain - Max Healthcare		Complaint of severe headache. Episode of difficulty in returning way back to home, helped by neighbours.
25.08.2020	Dr. Rohit Nayyar	MRI Max Healthcare, Saket, New Delhi	Centrally necrotic/cystic lesion (damage or abnormal change in the tissue) with peripheral heterogeneous enhancement and FDG (fluorodeoxyglucose) uptake in the right parietooccipital lobe, measuring ~5.5 × 3.7 cm. Non FDG avid, ~centimetre sized left level IV cervical lymph node.
31.08.2020	Dr. Rana Patir	MRI Fortis Memorial Research Institute, Gurugram	Suggestive of neoplastic etiology (caused by a benign tumor or cancer) – likely highgrade glioma.
04.09.2020	Dr. Rana Patir/ Dr. S. Hukku		Underwent right side occipito parietal craniotomy with right occipital lobectomy with excision of tumor. Also underwent adjuvant RT (radiation therapy) to brain lesion with adequate margins.
05.09.2020	Neurosurgery Team	MRI Fortis Memorial Research Institute, Gurugram	Right parietal craniotomy (surgery). Enhancement in bilateral fronto-parietal and right occipital regions with enhancement of tentorium cerebri on right side. T1 hypersensitivity to suggest hemorrhage. Suggestive of acute ischemia. Age related diffuse cerebral atrophy. Small foci of enhancement



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			seen around periphery of surgical cavity to suggest residual disease.
05.09.2020	Dr. Vineet Datta	Datar Cancer Genetics	Positive for brain malignancy (presence of a malignant tumour; cancer). Cells are positive for GFAP (Glial fibrillary acidic protein), Nestin (neuroepithelial stem cell protein), Olig2 (Oligodendrocyte lineage transcription factor), indicative of presence of Circulating Glial Cells (CGCs) in the given sample.
09.10.2020	Dr. Rahul Jain – Fortis Hospital, Shalimar Bagh, Delhi		Loss of appetite; General weakness.
21.10.2020	Dr. Anupam Bhargava – Max Super Speciality Hospital, Saket, New Delhi		Obstructed flow, poor flow. Hesitency, straining, pain in urethra, Back pain for three months. On four occasions had AUR (Acute Urinary Retention) and required catheterisation.
27.10.2020	Dr. Rahul Jain	MRI Fortis Hospital, Shalimar Bagh, Delhi	In a post-operative case of right occipital glioma, the study reveals post operative cavity in right occipital region, as described with few well-defined enhancing lesions medial to the cavity - likely residual disease.
30.11.2020	Self	MRI	Suggestive of ill-defined nodular enhancing lesions



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		Mahajan Imaging, Rajinder Nagar, New Delhi	around the post op. cavity in the right parasagittal occipital region with mild perilesional white matter edema. Elevated rCBV (Relative cerebral blood volume) in the enhancing foci suggesting residual/ recurrent lesion. Interval appearance of a new lesion in the anterior aspect compared to previous CE-MRI dated 27.10.2020. The previously seen two discrete enhancing lesions in medial aspect now appear confluent with increase in size.
28.04.2021	Dr. Rahul Jain	HRCT Chest Saral Diagnostics, Pitampura, Delhi	There are multiple patchy areas of ground glass opacities (hazy, increased opacity of lung) in both lungs, showing subpleural predominance. Multiple subpleural bands are also seen in both the lungs. Suggestive of covid-19 infection.
28.04.2021	Dr. Rahul Jain	MRI Saral Diagnostics, Pitampura, Delhi	Irregular heterogeneous enhancing lesions along post-op bed with large amount of surrounding edema (swelling caused by excess fluid trapped in the body's tissues) in right temporo-parieto-occipital lobe. There is possibility of recurrent disease.
26.05.2021	Dr. S. Hukku / Dr. Ranjana Srivastava	MRI BLK- MAX Super Speciality Hospital, Pusa Road, New Delhi	Post-op cavity in right occipital lobe with irregular heterogeneously enhancing lesions (soap bubble pattern of enhancement) along the superior and anterior aspects with moderate perilesional edema. Age related cerebral atrophy (loss of neurons and connections between



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			neurons).
18.08.2021	Dr. Rana Patir - Fortis Memorial Research Institute, Gurugram		Dizziness; Feeling of Imbalance; Headaches; Geographical disorientation.
31.08.2021	Prof. Vinod Raina - Fortis Memorial Research Institute, Gurugram		Speech difficulty – Slurring; Loss of left eye vision; Reduced vision in right eye; Loss of stability – feels likely to fall; Seizures; On and off headache.
04.05.2022	Dr. Nitesh Rohatgi	MRI Mahajan Imaging, Defence Colony, New Delhi	Increase in edema & enhancement anterior and superior to the post-operative cavity with increase in perilesional edema in the right temporal lobe. Increased perfusion (rCBF-Regional cerebral blood flow) on 3D ASL (arterial spin labelling) and rCBV on the contrast enhanced MR perfusion study. Overall increase in the disease process since the last MRI.
06.05.2022	Dr. Nitesh Rohatgi – Fortis Ft. Lt. Rajan Dhall Hospital, Vasant Kunj,		GBM (grade 4 glioma brain tumor) positive for MGMT (biomarker in patients diagnosed with gliomas). Increased perfusion. Increase in edema and enhancement anterior and superior to the post-operative cavity with increase in perilesional edema.



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23.05.2022	Dr. Rana Patir - Fortis Memorial Research Institute, Gurugram		Headache persists; Sense of direction reduced; Forgetful.
26.05.2022		MRI Fortis Memorial Research Institute, Gurugram	rCBV values varying from 3.5 to more than 5 to suggest high grade glioma. Post-operative changes with disease progression.
07.06.2022	Dr. Rima Khanna - Fortis Hospital, Shalimar Bagh, Delhi		Multiple episodes of abnormal smell followed by nausea; Partial seizure.
13.06.2022	Dr. Rima Khanna - Fortis Hospital, Shalimar Bagh, Delhi		Abnormal behaviour; Forgetfulness; Partial seizure; Recurrent falls due to weakness in legs.
16.06.2022	Dr. J.D. Mukherji		Disoriented; Weakness; Headache for 2 months;

During the aforementioned period of around 2 years, the Petitioner due to his medical condition was not in a position to give instructions to his Counsel and there was hardly any communication between the Petitioner and his Counsel. The Copies of deceased Petitioner's medical records along with their true typed copies are annexed as Document – 2 (Collectively).”

8. Placing reliance on the Judgment of the Hon'ble Supreme Court



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in *Mithailal Dalsangar Singh v. Annabai Devram Kini*<sup>4</sup>, learned Counsel for the Applicants submits that the approach of the Court while considering an application for setting aside abatement ought to be liberal, particularly where sufficient cause is demonstrated and the *lis* is sought to be decided on merits rather than being non-suited on technical grounds. The relevant paragraph of the said Judgment reads as follows:

“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, disintitiled 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

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<sup>4</sup> (2003) 10 SCC 691



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normally be interfered with by superior jurisdiction.”

*(emphasis supplied)*

9. It is submitted by the learned Counsel for the Applicants that the Hon’ble Supreme Court in the aforesaid decision has, *inter alia*, held that the expression “sufficient cause” under Order XXII Rule 9 CPC is to receive a liberal construction so as to advance substantial justice, and that abatement should not ordinarily operate as a penal consequence where the delay is *bona fide* and satisfactorily explained.

10. In view of the aforesaid, it is urged by the learned Counsel for the Applicants that this Court ought to adopt a liberal and justice-oriented approach while adjudicating the present Application, and accordingly, set aside the abatement, and permit substitution of the LRs of the deceased Respondent No. 1, thereby enabling adjudication of the matter on merits.

11. ***Per contra***, learned Senior Counsel appearing on behalf of the Proposed Respondent No. 1(B) opposes the present Application and submits that the entire foundation of the Applicants’ case, premised upon the alleged medical incapacity of the deceased Petitioner during the relevant period, is wholly misconceived and contrary to the material placed on record.

12. It is further submitted by the learned Senior Counsel that the deceased Petitioner, despite the assertions made in the Application, was at all material times capable of attending to his legal and commercial affairs and cannot be stated to have been incapacitated so as to constitute “sufficient cause” within the meaning of Order XXII Rule 9 CPC read with Section 5 of the Limitation Act.

13. Learned Senior Counsel for the Proposed Respondent No. 1(B) refers to the pleadings and the documents placed on record to



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demonstrate that the deceased Petitioner was actively engaged in legal proceedings during the very period for which incapacity is alleged. It is pointed out that the deceased Petitioner travelled to Chandigarh and caused a caveat to be filed before the High Court of Punjab and Haryana through the present counsel, which evidences both physical mobility and the requisite mental capacity to take conscious legal steps for the protection of his interests.

14. Learned Senior Counsel for the Proposed Respondent No. 1(B) further relies upon a Resolution dated 31.12.2021 passed by M/s Synthetic Inter Dyechem Pvt. Ltd., whereby the deceased Petitioner was authorised to handle and conduct legal proceedings on behalf of the said company. The said authorisation, reflecting the confidence reposed in the deceased Petitioner to manage legal affairs of the company, is stated to be wholly inconsistent with the plea of incapacity now sought to be advanced.

15. It is submitted that a conjoint reading of the aforesaid facts, when juxtaposed with the medical timeline relied upon in the Application, reveals inherent contradictions. The acts of travelling, filing a caveat, and being entrusted with legal responsibilities on behalf of a corporate entity fall within the very period during which the deceased Petitioner is claimed to have been incapacitated, thereby rendering the said plea by the Applicants untenable.

16. Learned Senior Counsel appearing for the proposed Respondent No. 1(B) has also drawn the attention of this Court to paragraph 5 of the present Application, wherein it is averred that the deceased Petitioner was not in a position to provide instructions to his counsel and that there was hardly any communication between the Petitioner and his counsel. Placing reliance on the said averments, learned Senior



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Counsel submits that the same are factually incorrect and stand belied by the material available on record.

17. Learned Senior Counsel further submits that the filing of the caveat and the existence of the board resolution pertaining to the relevant period clearly demonstrate that the deceased Petitioner was, in fact, actively instructing counsel and participating in the legal proceedings. These documents, therefore, directly negate the assertion of incapacity and indicate suppression of material facts by the Applicants.

18. In view thereof, it is submitted that no sufficient cause has been made out by the Applicants for setting aside the abatement. The Application, being founded on incorrect and misleading averments, is liable to be dismissed on this ground alone.

**ANALYSIS & DECISION:**

19. This Court has heard learned counsel appearing on behalf of the parties and, with their assistance, has carefully perused the documents and material available on record.

20. The legal position governing applications under Order XXII Rule 9 of the CPC read with Section 5 of the Limitation Act is well settled and has been consistently elucidated in a catena of judicial pronouncements.

21. It is trite that an application for setting aside abatement is to be considered with a degree of latitude, with the overarching objective of advancing substantial justice. Courts have repeatedly emphasised that procedural rules are handmaids of justice and ought not to be applied in a manner that defeats adjudication on merits. However, this liberal approach is neither unbridled nor unconditional. The discretion vested



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in the Court is circumscribed by the requirement that the applicant must establish the existence of “sufficient cause” for the delay.

22. Such cause must be *bona fide*, reasonable, and free from any element of negligence, deliberate inaction, or lack of due diligence. It is equally well settled that the equitable jurisdiction of the Court cannot be invoked by a litigant who has failed to act vigilantly or who has approached the Court with unclean hands, including by suppressing or misrepresenting material facts. The principles applicable in considering applications for setting aside abatement has been succinctly summarized by the Hon’ble Supreme Court in *Perumon Bhagvathy Devaswom v. Bhargavi Amma*<sup>5</sup>, of which the relevant portion reads as under:

“13. The principles applicable in considering applications for setting aside abatement may thus be summarised as follows:

- (i) 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 the 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 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.

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<sup>5</sup> (2008) 8 SCC 321



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(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 refiling 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 and is not expected to be listed for final hearing 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.”

*(emphasis supplied)*

23. In the present case, the principal ground urged by the Applicants for setting aside the abatement of proceedings *qua* the deceased Respondent No. 1 is the alleged medical incapacity of the deceased Petitioner during the relevant period. It is contended that owing to a serious ailment, the deceased Petitioner was incapacitated from effectively pursuing the present proceedings or from providing necessary instructions to his counsel. In support of this contention, reliance has been placed upon certain medical records, which have been annexed to the application with a view to demonstrating the severity of the ailment and the resultant inability of the deceased Petitioner to attend and file the necessary application in the present proceedings at that time.

24. However, upon a careful and holistic consideration of the material placed on record, this Court finds that the aforesaid plea does



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not inspire confidence and falls short of establishing “*sufficient cause*” within the meaning of the applicable legal framework. The record, in fact, reveals a series of circumstances which are inconsistent with the plea of incapacity sought to be advanced. Notably, it is not in dispute that during the very period for which the deceased Petitioner is alleged to have been incapacitated, he undertook travel to Chandigarh and caused a caveat to be filed before the High Court of Punjab and Haryana. The act of filing a caveat necessarily presupposes a conscious and deliberate decision to safeguard one’s legal interests, which, in turn, requires active engagement with legal counsel and an awareness of ongoing or anticipated proceedings.

25. In addition to the above, material has also been placed on record indicating that the deceased Petitioner was authorised, by way of a corporate resolution dated 31.12.2021, to conduct and manage legal proceedings on behalf of a company, *namely*, M/s Synthetic Inter Dyechem Pvt. Ltd. The existence of such authorisation during the relevant period further demonstrates that the deceased Petitioner was not only mentally alert but was also entrusted with responsibilities requiring the exercise of judgment and active participation in legal affairs. These circumstances, when read cumulatively, belie the contention that the deceased Petitioner was rendered incapable of attending to his legal obligations in the present proceedings.

26. The inconsistency between the plea of medical incapacity and the demonstrated conduct of the deceased Petitioner assumes greater significance in light of the specific averments made in the application, particularly in paragraph 5 thereof, wherein it is asserted that the Petitioner was not in a position to provide instructions to counsel and that there was hardly any communication between the Petitioner and



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his counsel concerning the present proceedings. The material on record, however, clearly contradicts this assertion.

27. The filing of proceedings before another High Court and the existence of a board resolution authorising legal action strongly indicate that the deceased Petitioner was, in fact, actively engaging with other legal processes. In the absence of any cogent explanation reconciling these contradictory positions, the explanation offered by the Applicants cannot be accepted as credible or *bona fide*.

28. It is also pertinent to underscore that abatement of proceedings is not a mere technical consequence but entails serious legal implications, including the accrual of a valuable right in favour of the opposite party. Once such a right has crystallised, it cannot be lightly interfered with, except upon the applicant establishing a sufficient and convincing cause for the delay. The Court must balance the principles of substantial justice with the equally important consideration of finality in litigation. In the present case, the conduct of the deceased Petitioner, as discernible from the record, does not reflect a situation of unavoidable or involuntary inability, but rather indicates a lack of due diligence in prosecuting the present proceedings.

29. In view of the aforesaid analysis, this Court is of the considered opinion that the Applicants have failed to make out a case warranting the exercise of judicial discretion for setting aside the abatement. The explanation furnished is neither satisfactory nor credible and does not meet the threshold of “*sufficient cause*” as contemplated under Order XXII Rule 9 CPC read with Section 5 of the Limitation Act. The plea of incapacity stands contradicted by the contemporaneous conduct of the deceased Petitioner, and no plausible justification has been offered by the Applicants for the delay in taking necessary steps in the present



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proceedings.

30. Further, the reliance placed by the learned Counsel for the Applicants on *Mithailal Dalsangar Singh* (*supra*) does not advance their case. While the said judgment undoubtedly endorses a liberal and justice-oriented approach in considering applications for setting aside abatement, premised on the principle that a litigant should ordinarily not be denied an opportunity to have a *lis* adjudicated on merits, it simultaneously carves out a clear exception. The Hon'ble Supreme Court has unequivocally held that such a liberal approach is not warranted in cases where the party seeking relief is guilty of gross negligence, deliberate inaction, or conduct bordering on abuse of process. In such circumstances, the party disentitles itself from invoking the discretionary and equitable jurisdiction of the Court.

31. In the considered view of this Court, the present case squarely falls within the said exception. The material on record demonstrates that the deceased Petitioner was actively engaged in legal affairs during the relevant period, contrary to the assertions made in the present Application. The Applicants have not only failed to establish due diligence but have also sought to rely upon assertions that stand contradicted by the record, thereby giving rise to a reasonable inference of suppression of material facts. In such circumstances, no indulgence can be granted, and the Applicants cannot claim the benefit of a liberal approach.

32. Accordingly, the present Application is dismissed in the aforesaid terms.

33. No Order as to costs.



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**O.M.P. 1413/2014, I.A. 8288/2018 (For modifications of orders 23.02.2015) & I.A. 11517/2018 (For Delay 44 days in filing the Reply by the petitioner to I.A. No. 8288/2018)**

34. List for consideration on 11.05.2026.

**HARISH VAIDYANATHAN SHANKAR, J.**  
**APRIL 10, 2026/tk/kr**