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

+ RFA 324/2017

VIJAY KUMAR SHARMA

.....Appellant

Through: Mr. Gaurav Goyal and Mr. Abhishek Yadav, Advocates for appellant / applicant.

versus

TARANJIT KAUR

.....Respondent

Through: Mr. Ajjay Aroraa, Sr. Advocate along with Mr. Kapil Dutta and Mr. Vansh Luthra, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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28.08.2025

CM APPL. 51811/2025 (for recalling of order dt. 06-02-2024)

1. The present application has been filed on behalf of the applicant, Smt. Divya Yadav, *inter alia*, seeking the following prayers:

“[a] recall order dated 06.02.2024 passed by this Hon’ble Court in RFA NO. 324 OF 2017; and/or
[b] restore and allow C.M Application No. 62293/2023 along with C.M Application No. 62294/2023 in RFA NO. 324 OF 2017; and/or
[c] take on record amended Memo of Parties in the aforesaid appeal: and/or”

2. The order dated 06.02.2024 reads as under:-

“1. Learned counsel for the respondent submits that the present appeal stands abated on account of failure on the part of the appellant to take requisite steps under Order 22, Rule 3 of the CPC within the prescribed time, and despite previous orders of this Court.

2. Since the present appeal admittedly stands abated, after some hearing, learned counsel for the appellant/applicant seeks leave to withdraw CM APPL. 62293/2023 & CM APPL. 62294/2023, with liberty to move appropriate application/s for setting aside the



abatement of the appeal consequent to death of the deceased/appellant.

3. In the circumstances, the aforesaid applications are dismissed. RFA 324/2017 stands abated.

4. If and when any application is filed by the appellant for setting aside of the abatement of the instant RFA, the same shall be considered in accordance with law.”

3. The factual matrix set forth by the applicant is that the appellant/ Mr. Vijay Kumar Sharma expired on 12.07.2021, during the pendency of appeal. The applicant, being his sole surviving legal heir, filed an application for substitution of legal heirs on 11.10.2021. It is submitted that the substitution application, though filed within the prescribed period under Order XXII Rule 3 of the Code of Civil Procedure, 1908, was rendered defective and remained unattended due to exceptional and unforeseen circumstances, notably the disruptions caused by the COVID-19 pandemic and the illness of the learned counsel representing the applicant. It is further averred that the learned counsel, acting under a bona fide belief, presumed that the said application was pending for listing before this Court, and therefore did not take further steps to cure the defects within the stipulated time.

4. Upon learning of the defects in August 2023, the applicant filed the requisite amended Memo of Parties and applications for substitution of legal heirs and condonation of delay, registered as CM Nos. 62293/2023 and 62294/2023 respectively. These applications were considered and dismissed by this Court *vide* order dated 06.02.2024, and the appeal was held to have abated. Liberty was granted to the applicant to file an appropriate application for setting aside the abatement.

5. Pursuant thereto, the applicant filed an application on 08.02.2024 seeking setting aside of the abatement and substitution of legal heirs. The



present application for recall of the order dated 06.02.2024 was filed subsequently, on the premise that the earlier remedy was insufficient.

6. Learned counsel for the applicant has placed reliance on the directions issued by the Supreme Court in *Suo Motu W.P. (C) No. 3 of 2020*, particularly the order dated 10.01.2022, whereby the period from 15.03.2020 to 28.02.2022 was excluded for the purposes of limitation. It is contended that the delay in curing defects ought to be condoned in light of the said directions. The said directions are reproduced as under:

“I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

7. Per contra, learned counsel for the respondent, refutes the maintainability of the present application, submitted that the applicant has already availed the liberty granted by this Court in its order dated 06.02.2024, by filing an appropriate application for setting aside of the



abatement, which is presently at the stage of final arguments.

8. It is further submitted that the impugned order was passed after affording opportunity of hearing to the applicant, and therefore, the same cannot be recalled. In support of this contention, reliance has been placed on the judgment of the Supreme Court in **Asit Kumar Kar v. State of West Bengal & Ors.**, (2009) 2 SCC 703, wherein it was held:

“There is a distinction between a petition under Article 32, a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.”

9. It is apparent from the record that the order dated 06.02.2024 was passed after hearing the applicant. In view of the settled legal position, as enunciated in **Asit Kumar Kar** (supra), the impugned order dated 06.02.2024 cannot be recalled.

10. Furthermore, the applicant has already exercised the liberty granted by this Court by filing an appropriate application for setting aside the abatement. The present application is therefore misconceived. The same is, accordingly, dismissed.

SACHIN DATTA, J

AUGUST 28, 2025/ss