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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LA.APP. 404/2015 & CM APPL. 14685/2024

ROOP CHAND (SINCE DECEASED) THR HIS LRS..... Appellant
Through: Ms. Jyoti Nambiar, Adv. (Through
VC) 989912754

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Vikrant N. Goyal, Mr. Sanjay
Pathak & Mr. Anushka Jaiswal, Advs.
(9399322817)

Mr. Musarrat Benazeer Hasmi, Adv.
for Mr. Sanjay Kumar Pathak,
Standing Counsel for R-1/UOI.

Mr. Ananya Roy, Adv. LR for
respondent (deceased) Virender
Kumar.

(9981556889)

Mr. Rishikesh Kumar,
(ASC-GNCTD), Ms. Sheenu Priya,
Mr. Atik Gill, Mr. Sudhir Kumar
Shukla & Mr. Sudhir, Advs. for
R-4/GNCTD.

(9911483629)

CORAM: MS. KAUSHLYA VERMA, REGISTRAR

ORDER

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28.03.2024

CM APPL. 14685/2024(U/s 151 CPC)

1. The present application has been moved by appellant
no.1(iii)-Mr. Naresh Kumar son of late Shri Roop Chand seeking
following relief:-

“.....to kindly remove/expunge the name of Sh.
Naresh Kumar from **Para no.4 of the Order dated**
08.02.2024 and clarify that no action be initiated
against Sh. Naresh Kumar.....”

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2. **Para 4** of order dated **08.02.2024** runs as under:

In the circumstance, issue court notice to the concerned SDM to take steps to recover amount of costs of Rs.15,000/- from appellant No.1(iii)-**Naresh Kumar, SPA Holder and Smt. Shaymo, W/o Late Sh. Ramchander, Pushpa Devi, daughter of Late Sh. Ramchander, Hari Chand, S/o Late Sh. Ramchander, Sunil Kumar, S/o Late Sh. Ramchander and Anil, S/o Late Sh. Ramchander, all residents of 222, HOLAMBI KALAN, DELHI-110082,** and deposit the same in the name of Registrar General of this court, returnable on **24.05.2024.**

3. **The circumstances** which constrained this Court to pass the afore-mentioned order dated 08.02.2024 was the non-payment of costs of Rs.15,000/- imposed, vide order dated 29.03.2023, on proposed LRs of deceased appellant No.1(i)- **Sh. Ram Chander)** and appellant No.1(III) (Mr. Naresh Kumar) while dismissing their applications bearing CM NO. 54246/2022 (u/O 22 Rule 3 CPC), CM 54247/2022 (u/Section 5 of the Limitation Act for condonation of delay of 600 days and CM 14433/2023(u/Section 5 of the Limitation Act for condonation of delay of 194 days) (**period of 194 days computed in terms of order passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) NO.3 of 2020).**
4. The reasons for dismissal of the said applications have been delineated in the order dated 29.03.2023 itself. page 2 of 13



5. **Summary of order dated 29.03.2023 is given as under:**
6. Appellant No.1(i)-Sh. Ram Chander unfortunately expired on 17.01.2021. The proposed LRs of the said deceased appellant moved applications bearing CMs 54246/2022, (u/O 22 Rule 3 CPC) and CM 54247/2022 (U/S 5 of the Limitation Act for condonation of delay 600 days) before this Court.
7. **Notably,** appellant No.1(iii)- Mr. Naresh Kumar and SPA holder- of other appellants and also claiming himself to be a SPA holder of proposed LRs of deceased appellant No.1(i) also moved an application bearing CM 14433/2023 under section 5 of the Limitation Act seeking condonation of Delay of 194 days in filing of CM 54246/2022(moved under order 22 rule 3 CPC) supported by an affidavit duly deposed by him stating that Appellant No.1(iii) is SPA holder of other LRs of appellant No.1(i), namely Sh. Ram Chander and well conversant with the facts and circumstances of the present case and competent to swear the affidavit.
8. Relevant portion of the said affidavit annexed to CM NO. 14433/2023 (moved U/S 5 of the Limitation Act, 1963) of appellant no.1(iii)- Mr. Naresh Kumar is reproduced as under:

I, Naresh Kumar S/o late Sh. Roop Chand aged about 47 years R/o H.No. 222, Village-Holambi Kalan, Delhi 110082, do hereby solemnly affirm and declare as under:-

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1. That I am Appellant No.1(iii) and SPA of the other LRs of Appellant No.1 of this above captioned appeal and well conversant with the facts and circumstances of this case and as such, I am competent to swear this affidavit.
 2. That the contents of the accompanying application under Section 5 of Limitation Act for condonation of delay have been drafted by my counsel under my instructions. The contents of the same have been read over to me in my vernacular language which are true and correct to my knowledge and the same may be read as part and parcel of this affidavit which are not being repeated herein for the sake of brevity.
9. This Court had no reason to disbelieve the averments made in the application bearing CM 14433/2023, filed by appellant No.1(iii)-Mr. Naresh Kumar which was duly supported by an affidavit deposited by him.
10. Narration of facts/ perusal of affidavit duly deposited by appellant no. 1 (iii) on 21.03.2023, makes it crystal clear that he continued to be a Special Power of Attorney holder on behalf of proposed LRs of deceased appellant No.1(i) and moved CM 14433/2023 under section 5 of the Limitation Act for condonation of Delay of 194 days in moving CM 54246/2022 (U/O 22 Rule 3 CPC).
11. Concluding para of order **29.03.2023** runs as under:
- Resultantly, in the peculiar facts and circumstances of the case the applications filed by the applicants and appellant No.1(iii)-Sh. Naresh Kumar, SPA holder deserves to be dismissed with the costs of Rs. 15000/- out of which Rs. 10,000/- shall be payable to respondent No.5 and Rs.5,000/-**
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shall be deposited with the Secretary, Delhi High Court Legal Services Committee, Delhi High Court, New Delhi on or before the next date of hearing.

12. The present matter was re-notified on 20.04.2023, awaiting the compliance of payment of costs.
13. On 20.04.2023, learned counsel for the appellants submitted that she has filed a Chamber Appeal against the order dated 29.03.2023, and she is ready to pay costs imposed vide order dated **29.03.2023**, subject to outcome of the said appeal.
14. On 20.04.2023 itself, learned counsel for respondent No.5 submitted that respondent No.5 was murdered and sought time to furnish details of his legal heirs/LRs to learned counsel for the appellants.
15. The purported Chamber Appeal against the order dated 29.03.2023, as per available record, was never filed by the proposed LRs of deceased appellant No.1(i) (whose applications stood dismissed) and appellant No.1(iii)- SPA holder of other appellants and proposed LRs of deceased appellant No.1(i) (whose application bearing CM No. 14433/2023) seeking condonation of delay of 194 days **(period of 194 days computed in terms of order passed by the Hon'ble Supreme Court in Suo Motu WP (C) NO.3 of 2020)** in filing CM 54246/2022 was also dismissed).

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16. By 15.09.2023, more than five months had elapsed but the payment of costs was not made.
17. On 15.09.2023, Learned counsel for the appellant no.1 (iii) submitted that payment of costs of rupees 10,000/- would be paid to LRs of R-5 after the said LRs are brought on record.
18. She further submitted that costs of Rs.5000/- with the Secretary, Delhi High Court Legal Services Committee, Delhi High Court, New Delhi would be deposited within a period of two weeks in terms of order 29.03.2023.
19. After 15.09.2023, the matter came up before this Court on four more dates, however, costs of Rs.15,000/- **especially Rs. 5000/- out of the said amount, was not deposited with the Secretary Delhi High Court Legal Services Committee, Delhi High Court.**
20. The applications filed for bringing on record the proposed LRs of deceased respondent No.5 was allowed on 16.01.2024, however, the costs was still not paid/deposited.
21. By 08.02.2024, a period of more than ten months had elapsed since the passing of the order dated 29.03.2023 but the costs was not paid/deposited by appellant No.1(iii) and proposed LRs of deceased appellant No.1(i).
22. Thus, this Court had no option to recover the costs in the ordinary way and therefore, an order dated 08.02.2024 came



to be passed directing the concerned SDM to take steps to recover the amount from appellant No.1(iii) and applicants, in the dismissed applications.

23. Appellant No.1(iii)-Mr. Naresh Kumar, SPA Holder instead of making payment of costs alongwith applicants namely Smt. Shaymo, W/o Late Sh. Ram Chander, Pushpa Devi, daughter of Late Sh. Ram Chander, Hari Chand, S/o Late Sh. Ram Chander, Sunil Kumar, S/o Late Sh. Ramchander and Anil, S/o Late Sh. Ram Chander, has filed the present application **CM APPL 14685/2024 (u/S 151 CPC).**

24.Paras 3, 4 and 5 of **CM APPL 14685/2024** run as under:-

- 3(i)Sh. Naresh Kumar is the SPA holder for all the present Appellants and was also the holder for Late Sh. Ram Chander: with the death of Late Sh. Ram Chander (principal), his agency with Sh. Naresh Kumar also terminates. (Section 201 of the Indian Contract Act, 1872). Therefore, Sh. Naresh Kumar has no role to play in the Applications moved by the LRs of Sh. Ram Chander.
- (ii) Perusal of both the applications i.e. CM no. 54246/2022 and CM no. 54274/2022 will show that applications were moved by the LRs of Late Sh. Ram Chander. The applications are signed by the LRs themselves and the affidavits affirmed are also of the LR of Late Sh. Ram Chander. Sh. Naresh Kumar neither signed the pleadings, nor affirmed the

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affidavits and hence, Sh. Naresh Kumar has no liability or responsibility in the applications filed by the LRs of Late SH. Ram Chander, and as such Sh. Naresh Kumar cannot be made liable in any manner for the application moved by the LRs of Late Sh. Ram Chander.

(4) That despite the fact that SH. Naresh Kumar has no liability or responsibility upon the CMs filed by the LRs of Late SH. Ramchander, however still, as stated above, the Order dated 08.02.2024 directs action against Sh. Naresh Kumar as well, as much as the SDM is directed to recover the cost from SH. Naresh Kumar. The said part of the order is impugned and hence the present application for modification.

(5) That no liability can be imposed upon SH. Naresh Kumar as he is neither the party/authority who preferred the application nor can any liability be put on SH. Naresh Kumar. Hence the Order Dated 08.02.2024 ought to be modified to the extent that Naresh Kumar, SPA holder, be expunged from any action or proceedings by the SDM.

25.Learned counsel for the parties had advanced arguments on
11.03.2024.

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26. Section 201 of the Indian Contract Act, 1872 runs as under:-

201. Termination of agency.—

An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

27. A bare reading of Section 201 of the Indian Contract Act, 1872, shows that agency can be terminated in the situation/s as envisaged under the said Section.

28. If provisions of Section 201 of the Indian Contract Act, 1872 are applied to the arguments/averments of Mr. Jyoti Nambiar, learned counsel for appellant No.1(iii), then the agency of appellant No.1(iii)-(SPA HOLDER)(agent) qua appellant No.1(i)-Sh. Ram Chander(principal), stood terminated on 17.01.2021 itself on account of his unfortunate demise.

29. However, appellant No.1(iii) moved CM 14433/2023 claiming himself to be a SPA Holder of proposed LRs of deceased appellant No.1(i) and this Court, on going through the averments made in the said application, duly supported with an affidavit by Mr. Naresh Kumar and the unravelling of events/facts by way of reply filed by respondent No.5



and submissions made before this Court by Ms. Ananya Roy, learned counsel for respondent No.5 , dismissed the application/s .

Arguments advanced on 11.03.2023 on behalf of appellant No.1(iii)/applicant-Mr. Naresh Kumar.

30.Ms. Jyoti Nambiar, learned counsel for the appellant No.1(iii) drew attention of this Court to para 3(i) of the present application (14685/2024 moved u/S 151 CPC) wherein it has been averred by the applicant/appellant No.1(iii) that Sh. Naresh Kumar is the SPA Holder for all the present appellants and was also the holder for Late Sh.Ram Chander and with the death of Late Sh. Ram Chander (principal), his agency with Sh. Naresh Kumar also terminates, (Section 201 of the Indian Contract Act, 1872).

31.It was submitted by learned counsel for appellant No.1(iii) that Sh. Naresh Kumar had no role in moving the application bearing **CM Nos 54246/2022** and **54247/2022** for substitution of LRs of deceased appellant No.1(i)-Sh. Ram Chander, as the said applications were filed by proposed LRs of deceased appellant No.1(i) themselves.

Arguments advanced by Ms. Ananya Roy, Ld. Counsel appearing on behalf of LRs of deceased Respondent no. 5.

32.**On the other hand**, learned counsel for respondents No5(i to iv) submitted that the appellant No.1(iii)-Naresh Kumar

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being a SPA Holder of all the remaining appellants including SPA holder of **deceased appellant No.1(i)-Sh. Ram Chander**, moved the Hon'ble Supreme Court on 18.02.2021 **concealing the material fact of demise of appellant No.1(i)** and filed a SLP against an order dated 08.01.2021 passed by the Hon'ble High Court whereby 80% of the compensation amount was directed to be released to respondent No.5 **and obtained a stay order on 03.03.2021.**

33.Learned counsel for respondents 5(i to iv) further submitted that appellant No.1(iii)-Naresh Kumar remained SPA holder in respect of deceased appellant No.1(i) for the purpose of moving the Hon'ble Supreme Court, filing a SLP and obtaining a stay order in favour of appellants including deceased appellant No.1(i), but now wants to wriggle out of the liability of making payment of costs of Rs.15,000/- (order 29.03.2023 and 08.02.2024) alongwith applicants in dismissed applications bearing CM APPL 54246/2022(U/O 22 Rule 3 CPC and CM APPL 54247/2022(U/S 5 of Limitation Act for condonation of delay).

34.She further submitted that the obvious conduct of appellant No.1(iii) to blow hot and cold simultaneously as per his convenience should not be accepted by this Court.

35.Ms. Ananya Roy, learned counsel further submitted that the order dated 29.03.2023 and subsequent order dated 08.02.2024 holding the appellant No.1(iii) along with



proposed LR's of deceased appellant No.1(i) liable to pay costs of Rs. 15,000/- is justified.

Analysis of this Court

36. Appellant No.1 (iii) moved an application before this Court seeking condonation of delay duly supported with an affidavit affirming that **he** is a SPA Holder of proposed LR's of deceased appellant No.1(i)- Shri. Ram Chander.
37. By virtue of the present application bearing CM NO. 14685/2024, appellant No.1(iii) has now taken a reverse position at his sweet will and convenience despite the fact that he had moved requisite application claiming himself to be a SPA Holder on behalf of proposed LR's of deceased appellant No.1(i).
38. His present conduct amounts to an attempt to mislead this Court, which again is nothing but an abuse of process of law.
39. This kind of conduct of appellant No.1(iii)-Mr. Naresh Kumar is deprecated by this Court.
40. Resultantly, CM 14685/2024 moved under Section 151 CPC is dismissed with costs of Rs.10,000/- to be payable to Ms. Ananya Roy, learned counsel for LR/s of respondent No.5. The costs is directed to be paid within a period of one month from today.



41. To be noted, after a lapse of eleven months since the passing of the order dated 29.03.2023, proof of deposit of costs of Rs.5000/- (**paid on 11.03.2023**), with the Delhi High Court Legal Services Committee was produced by learned counsel for appellants in this Court and the **order of this Court dated 13.3.2023 records such deposit of costs.**

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42. List the matter before the Hon'ble Court on 03.04.2024, i.e. the date already fixed.

REGISTRAR

MARCH 28, 2024

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