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

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LA.APP. 404/2015

ROOP CHAND (SINCE DECEASED) THR HIS LRS ..... Appellant

Through: Mr. V.P. Rana with Ms. Jyoti Nambiar,  
Advocates (9899127654)

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Sanjay Kr. Pathak, Mr. Vikrant  
N. Goyal, Advocates (through VC)  
Ms. Rini Violet Tigga, Advocate for  
respondent No.1-UOI  
Mr. Rishikesh Kumar, ASC with  
Mr. Sudhir, Mr. Aditya Raj, Mr. Sumit  
Choudhary & Ms. Priya, Advocates for  
respondent No.4  
(9911483629)  
Ms. Ananya Roy and Ms. Geeta  
Bajaj, Advocates for respondent No.5  
(9971556889)

**CORAM: MS. KAUSHLYA VERMA, REGISTRAR**

**ORDER**

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**29.03.2023**

At the time of filing this appeal, there were eight appellants. A special power of attorney was executed by appellants No.1(i, ii, & iv to viii) on 26.09.2015 in favour of appellant No.1(iii)-Sh. Naresh Kumar authorizing him to take care of the present proceedings pertaining to the suit property. Unfortunately, appellant No.1(i)-Sh. Ram Chander expired on 17.01.2021. Consequently on 11.12.2022 two applications being CM APPLs. 54246/2022 ( u/O 22 Rule 3 CPC) & 54247/2022 (u/S 5 of Limitation Act seeking condonation of

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delay of 600 days) were filed by the applicants seeking their substitution in place of deceased appellant No.1(i)-Sh. Ram Chander. On 22.03.2023, an application being CM APPL.14433/2023 was filed under Section 5 of the Limitation Act, computing the delay as 194 days in view of the Suo Motu Case No. WP(C) 3/2020 whereby a period from 15.03.2020 to 28.02.2022 was excluded for the purpose of computing limitation in respect of quasi judicial and judicial proceedings and a further period of 90 days was granted w.e.f. 01.03.2022 in the wake of Covid-19 induced lock down. Today, this Court is dealing with the above-said three applications.

**CM 54246/2022 (u/O 22 Rule 3 CPC)**

A copy of death certificate of deceased appellant No.1(i)-Sh. Ram Chander has been annexed to the application. The details of applicants/ proposed LRs (a to e) have been given in para 4 of the application (page No.577). In the prayer clause it has been averred that in the interest of justice, the present application may be allowed. An affidavit has been sworn in by one of the LRs, namely, Sh. Hari Chand s/o late Sh. Ram Chander aged about 38 years deposing, inter-alia that the instant application has been drafted by his counsel under his instructions and contents of the same have been read over and explained to him in vernacular which are true and correct to his knowledge.

**CM 54247/2022 (U/S 5 of the Limitation Act for condonation of delay of 600 days)**

In this application, the applicant-Sh. Hari Chand, one of the

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proposed LRs of deceased appellant No.1(i), has pleaded that appellants are from rural background and the matter in the Supreme Court was being conducted by the counsel only and there could not be any direct interaction between the counsel and Sh. Naresh Kumar, who is the parokar for other family members and also one of the appellants i.e. appellant No.1(iii). It is stated that applicant- Sh. Hari Chand and Sh. Naresh Kumar-appellant No 1(iii) were of the opinion that this information with regard to death of appellant No.1 (i) will be required to be given when hearing of Appeal will commence in the Hon'ble High Court which was pending in the Regular list. Due to these reasons the applications for substitution could not be moved earlier. Now, when the Hon'ble Supreme Court decided the matter finally and remanded the matter to Hon'ble High Court with directions to decide the appeal within six months, then the appellant was called when application for reopening for matter in pursuance of directions of Apex Court was being prepared then this information was provided by the appellant.

The main plea taken in CM APPL.14432/2023 by appellant No.1(iii)-Sh. Naresh Kumar, SPA holder on behalf of other appellants is that he was not aware about the necessity of moving an application to bring on record the proposed LRs of deceased appellant No.1(i) till 04.11.2022. In para 6 of this application there is an averment that in between 04.11.2022 to 31.01.2023, the present counsel appearing in the High Court called Sh. Naresh Kumar in chamber and explained the order of the Hon'ble Supreme Court and



during the said discussion it was informed by Sh. Naresh Kumar that appellant No.1(i) expired on 17.01.2021.

On 23.01.2023, respondent No. 5 filed reply to the applications (CMs 54246/2022 & 54247/2022) contending therein that death of appellant No.1(i)/ Ram Chander took place on 17.01.2021 and the appellants approached the Hon'ble Supreme Court by way of an SLP (Civil) 3372/2021 (filed on 18.02.2021) and secured a stay order on 03.03.2021 in their favour including the deceased appellant No.1(i)-Ram Chander qua order dated 08.01.2021 passed by this Hon'ble Court. The order dated 08.01.2021 had allowed respondent No.5 to withdraw an amount equivalent to the 80% of the decretal compensation along with interest accrued thereon against the security/ undertaking to be furnished by the respondent No.5.

On 21.03.2023, an application being CM 14432/2023 was filed by respondent No.5 seeking leave of this Court to place on record amended reply giving complete details of the relevant dates and events regarding the status of appellants and their Attorney Naresh Kumar. The said application was allowed by this Court on 23.03.2023 and the amended reply was taken on record.

In the said amended reply of respondent No.5 filed to aforesaid applications moved by the appellants, it has been stated by respondent No.5 that order for release of amount of 80% of decretal compensation was passed on **08.01.2021** in favour of respondent No.5 by Hon'ble High Court and Appellant No 1(i) namely Ram



Chander expired on **17.01.2021**. Thereafter, the appellants moved the Hon'ble Supreme Court by way of SLP(Civil) which was filed on **18.02.2021** whereas admittedly the appellant No.1(i) died on 17.01.2021 and they neither disclosed the factum of demise of appellant No.1(i) nor they moved the requisite application for impleadment of LRs of deceased appellant No.1(i) and were able to secure the stay order in their favour including the deceased appellant No.1(i)-Ram Chander from the Hon'ble Supreme Court.

Para 6 of CM 14433/2023 (u/S 5 of Limitation Act), moved by Appellant No.1 (iii), who is also Special Power of Attorney Holder on behalf of all other appellants, is reproduced at the cost of repetition as under:-

“When the matter was remanded to the Hon'ble High Court by the Hon'ble Supreme Court vide order dated 18.10.2022, first hearing in the Hon'ble High Court thereafter was 04.11.2022. On 04.11.2022, present counsel appearing in the Hon'ble High Court had no occasion to seek any instructions as no instruction was required to appear on 04.11.2022. **On 04.11.2022, the matter was adjourned to 31.01.2023. In between these two dates counsel called Sh. Naresh Kumar in the Chamber and explained the order of the Hon'ble Supreme Court and during the said discussion it was informed by Sh. Naresh Kumar that Appellant No.1 (i) expired on 17.01.2021. When counsel expressed his displeasure for not giving this information earlier, Sh. Naresh Kumar said that he himself was not aware about this necessity as he thought that since he is the attorney his presence and signature on pleadings are sufficient.** Thereafter, the application which is CM 25246/2022 under Order 22 rule 3 CPC was filed on 11.12.2022.”



In the aforesaid para, the bold and underlined portion has been done by this Court to point out the contradiction in the statements of Appellant No.1(iii)- Naresh Kumar.

Learned counsel for respondent No.5 has placed on record a copy of order dated 08.08.2022 passed in LAC No. 1619/16 listed before ADJ-I titled Union of India (Holambi Kalan) vs. Gram Sabha Holambi Kalan ( placed at page 672 of the case file). Para 2 of order dated 08.08.2022 is reproduced as under:-

“An application on behalf of IP-8 Ram Chander has also been filed u/o 22 Rule 3 r.w. Section 151 CPC to bring on record his Lrs who expired on 17.01.2021. The application be taken on record. Notice of the application be served on the LAC to file the Lr verification report for the next date of hearing. Now case be put up for final arguments on 27.08.2022 for filing the LR verification report also.”

A careful reading of above noted para 6 of CM 14433/2023 and para 2 of order dated 08.08.2022 points out the contradictory stand taken by Sh. Naresh Kumar-appellant No.1(iii).

Further, following inference can be drawn from the reading of above noted paras:-

It is clear that on 08.08.2022 when the matter was taken up by the learned ADJ-1 (North)/Rohini Courts, Appellant No.1(iii) namely Sh.Naresh Kumar was aware well before 08.08.2022 about the necessity of bringing on record the proposed LRs of deceased appellant No.1(i)- Ram Chander as it cannot be assumed in any case



that on the fine morning of 08.08.2022, he became aware of the legal position and the necessity of bringing on record the proposed LR's of deceased appellant No.1(i) and contacted immediately his counsel, who in turn drafted the application under Order 22 Rule 3 CPC and filed the same to be taken up by the learned ADJ-I (North)/Rohini Courts on 08.08.2022 itself.

Similarly, in para 6 of CM 14433/2023 it has been stated that in between these two dates (i.e. 04.11.2022 to 31.01.2023) present counsel appearing in the Hon'ble High Court called Sh. Naresh Kumar in the chamber and explained the order of the Hon'ble Supreme Court and during the said discussion it was informed by Sh. Naresh Kumar that appellant No.1(i) expired on 17.01.2021 and thereafter the application under Order 22 Rule 3 CPC was filed before this Court on 11.12.2022. It is pertinent to mention that the date of alleged meeting having taken place is conspicuously missing. Thus, the contradictory stand taken by appellant No.1(iii)-Sh. Naresh Kumar, SPA holder is quite discernible and is not acceptable to this Court.

Appellant No.1(iii)-Sh. Naresh Kumar has filed an affidavit along with CM 14433/2023 deposing therein that the application under Section 5 of Limitation Act for condonation of delay has been drafted by his counsel under his instructions. Further, the contents of the same have been read over to him in his vernacular language which are true and correct to his knowledge and the same may be read as part and parcel of this affidavit. Sh. Naresh Kumar has



signed the affidavit in English. However, irrespective of the language of his signature, it is clearly stated in the affidavit that contents of the application have been read over to him in his vernacular language and same have been admitted to be true and correct.

The applications, especially para 6 of CM 14433/2023 when read in conjunction with reply of respondent No.5 and para 2 of order dated 08.08.2022 alongwith the affidavit sworn in by Sh. Naresh Kumar make clear that Naresh Kumar has contradicted his own stand and misrepresented before this Court.

Mr. V.P. Rana, learned counsel appearing for the proposed LR's of deceased appellant No.1(i) and other appellants submits that counsel who appeared before the Hon'ble Supreme Court, this Court and the learned Trial Court are different.

Dealing with the aforesaid contention, a careful reading of para 6 of CM 14433/2023 mentions inter-alia that on 04.11.2022, present counsel appearing in the Hon'ble High Court had no occasion to seek any instructions as no instruction was required to appear on 04.11.2022. Further, the para reads; that on 04.11.2022, the matter was adjourned to 31.01.2023. In between these two dates counsel called Sh. Naresh Kumar in the Chamber and explained the order of the Hon'ble Supreme Court. It shows that the instructing counsel before the Hon'ble Supreme Court and before this Court was the same. Even assuming for a while that the counsel were different, as contended by learned counsel for the appellants, still it cannot be



denied that the parties before the Hon'ble Apex Court, learned Trial Court and this Court are the same.

Now coming to the legal provisions:-

Order 22 CPC deals with situations where party to a suit dies and the necessity of bringing on record the LRs of deceased party arises. Rule 1 of Order 22 CPC contemplates that death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. Rule 11 Order 22 CPC states that in the application of this Order to appeals, as far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal. Rule 3 of Order 22 CPC envisages mandatory provisions. Rule 3 Order 22 is reproduced as under:-

Procedure in case of death of one of several plaintiffs or of sole plaintiff.-

- (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
- (2) Where within the time limited by law no application is made under sub-rule (1) the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Rule 9 Order 22 CPC deals with effect of abatement or dismissal. Sub-rule (2) states that the plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee



or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit. Sub-rule (3) of Rule 9 contemplates that the provisions of Section 5 of the Limitation Act, 1963 shall apply to applications under sub-rule (2). In the Schedule part to the Limitation Act the periods of limitation has been prescribed for various types of applications. Under serial No.120 to the said Schedule, a period of 90 days has been prescribed in the case of death of plaintiff, appellant, defendant or respondent , as the case may be.

Section 5 of the Limitation Act runs as under:-

5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

An Explanation has been added below Section 5, which runs as under:

The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

Sub-rule (5) (a) of Rule 4 contemplates one of the sufficient causes, however, the same is applicable in case of death of



defendant. It says that where the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 and the plaintiff (under sub-rule b) applies after the expiry of the period specified therefore, the Court shall in considering the application under the said Section 5 have due regard to the fact of such ignorance, if proved.

However, case under consideration pertains to the death of one of the appellants and, therefore, in the present case, sub-rule 5(a) of Rule 4 Order 22 CPC does not apply.

In the application moved U/S 5 of Limitation Act for condonation of delay there is not an iota of “cause” leave aside the “sufficient Cause” as contemplated under Section 5 of the Limitation Act which may be taken into consideration for condonation of delay of 194 days in moving the application under Rule 3 Order 22.

Mr. V.P. Rana, learned counsel for the appellants and proposed LRs of deceased appellant No.1(i) has placed reliance on para 10 of a judgment of Hon’ble Supreme Court titled Nagina Singh and other vs. Naga Singh and Others (2002) 7 SCC 113, which is reproduced as under:-

10. Though there is a serious dispute as to the dates of death of Appellants 1(d) and 1(e), we are of the considered view that in the facts and circumstances of this case, the application for substitution of legal representatives of the aforesaid appellants should not have been

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rejected, having regard to the fact that the contesting parties were on record and these appellants were brought on record only as legal representatives of Appellant 1 who had died during the pendency of the appeal. Having regard to the facts of the case and in the interest of justice the High Court ought to have condoned the delay, if any, in filing of the application for substitution and could have compensated the respondents by award of cost. This we consider appropriate, having regard to the interest of justice. The parties have litigated since the year 1974 and it is only fair that there should be adjudication on merit”.

Learned counsel for the appellants submits that appellants are in litigation for the last more than twenty years and thus they are suffering. He submits that in the instant case “Nagina Singh” (supra), the Hon’ble Supreme Court considered the facts that the contesting parties were on record and the said appellants were brought on record only as legal representatives of Appellant No.1 who had died during the pendency of the appeal. Learned counsel for the appellants submits that facts of the present case are on the similar footing as that of the case “Nagina Singh” (supra). He further submits Appellant No. 1(iii)- Sh. Naresh Kumar has not concealed the fact of death of appellant No.1(i) from the Hon’ble Supreme Court as he did not know the necessity of bringing on record the LRs of deceased appellant No.1(i) nor he misrepresented before this Court by saying in para 6 of the application moved under Section 5 of the Limitation Act for condonation of delay of 194 days



that it was between 04.11.2022 and 23.01.2023 that a meeting took place where he was called by his counsel in his chamber, where only he disclosed about the factum of death of appellant No.1(i) for the first time. He further submits that had he concealed or misrepresented, as aforesaid, it would result in detriment to the interest of the appellants and in anyway the appellants are not going to be benefited by such concealment or misrepresentation.

The facts of the “Nagina Singh” (supra) may be on the similar footing as that of the present case inasmuch as length of period of pendency of proceedings inter se the parties, the fact that other appellants i.e. (1 (i) to viii) having been brought on record before the Court below and the present appeal having been filed by the LRs of deceased appellant- Roop Chand (since deceased) as being arrayed as Appellant No.1 (i to viii) and finally out of them appellant No. 1(i)- Ram Chander having expired. However, the facts can be distinguished between the case on hand and case cited by learned counsel for appellants on the ground of misrepresentation of facts before this Court at the initial stage when the applications under Order 22 Rule 3 CPC and Section 5 of Limitation for condonation of delay of 600 days were filed. It was only at the subsequent stage i.e. after the reply was filed by respondent No.5 stating, inter-alia, that there was misrepresentation on behalf of appellant No.1(iii)- Sh. Naresh Kumar, with respect to the necessity of bringing on record the proposed LRs of deceased appellant No.1(i), where he has averred in para 6 of the application CM No.14433/2023 that there



was a meeting in between 04.11.2022 to 31.01.2023 and only during this meeting he told the counsel about the factum of death of appellant No.1(i)-Ram Chander. Whereas before the relevant date i.e. 04.11.2022 appellant No.1(iii)-Sh. Naresh Kumar, SPA holder on behalf of all appellants admittedly had already moved an application under Order 22 Rule 3 read with Section 151 CPC for bringing on record the proposed LRs of deceased appellant No.1(i), which was taken up on 08.08.2022 by the learned ADJ-I (North), Rohini Courts.

The learned counsel for the appellants could not bring my attention in the said judgment where the appellant concealed or misrepresented the facts as is the case in the present proceedings of the applications.

The aforesaid applications are dismissed for the following reasons, summarised, as under:-

- (i) Ignorance on the part of appellant No.1(iii)-Sh. Naresh Kumar, aged 47 years of age, authorized as SPA holder and taking care of the present appeal since 2015 cannot be attributed in view of his contradictory stand.
- (ii) A finding on misrepresentation of facts before this court has been arrived at in view of his stand that it was only between 04.11.2022 to 31.01.2023 when an alleged meeting took place between him and his counsel and only then and



there he disclosed the fact of death of appellant No.1(i) for the first time, whereas, admittedly, he had already moved an application under Order 22 Rule 3 CPC before the learned ADJ-I (North), Rohini Courts for bringing on record the LRs of deceased appellant No.1(i).

- (iii) As discussed in the previous paras, appellant No.1(iii) was aware about the necessity of bringing on record the LRs of deceased appellant No.1(i) as it cannot be assumed that in the fine morning of 08.08.2022, he became aware of the legal position and the necessity about bringing on record the LRs of deceased appellant No.1(i) and on the same day, he contacted his counsel, got drafted and listed the application to be taken up on 08.08.2022 itself. This Court is unable to understand as what was the sufficient cause which prevented him from taking necessary steps before this Court for the purpose.
- (iv) There is no whisper of sufficient cause in the application which may be taken into consideration by this court to condone the delay of 194 days. It is a settled legal position that length of delay is not material but it is the sufficient cause which is the touch stone to



determine the criteria as to whether delay is to be condoned or not.

- (v) In the application moved by the applicants, it has been stated that the appeal was admitted and was listed in the Regular List. No doubt, the present appeal was admitted on 09.10.2015 and order dated releasing the amount of compensation to the tune of 80% was passed on 08.01.2021 on the application of respondent No. 5, but it is also a matter of record that the present appeal was thereafter listed on seven dates subsequently for the purpose of valuation of property sought to be furnished by the respondent No.5. The appellant could have moved the requisite applications during that time before this Court.

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/- 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.

List for compliance on 20.04.2023.

**MARCH 29, 2023/vk**

**REGISTRAR**

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