

Hem Raj v. Guddi

RSA No. 89 of 2008

6.12.2022

Present

Mr. Ajay Sharma, Senior Advocate with Mr. Atharv Sharma, Advocate, for the appellants.

Mr. Lakshay Thakur, Advocate, for respondents Nos. 1(a), 1(d), 1(f) and 1(i).

CMP(M) No. 1121 of 2021

By way of instant application, filed under Order XXII rules 4 and 9 CPC read with S.5 of Limitation Act, prayer has been made on behalf of the appellants for bringing on record legal representatives of respondent No. 1(h)-Jagdish, who has expired on 8.10.2020, leaving behind legal representatives as detailed in para 2 of the application, after condoning delay and setting aside abatement, if any,.

Pursuant to notices issued in the present application, proposed legal representatives of respondent No. 1(h) stand duly served. Mr. Lakshay Thakur, Advocate has put in appearance on behalf of proposed legal representatives 1(h)(i) to 1(h)(iii). Mr. Lakshay Thakur, Advocate states that he does not intend to file reply to the application and has no objection in case, prayer made in the application is allowed.

Having perused the averments contained in the application, which is duly supported by an affidavit this court is convinced and satisfied that that delay is neither intentional nor willful, rather owing to the circumstances, which were completely beyond the control of the appellant, as such, delay, which otherwise stands sufficiently explained, is condoned. Abatement is set aside.

Averments contained in the application further reveal that respondent No. 1(h)-Jagdish died on 8.10.2020, leaving behind legal representatives as detailed in para 2. Since right to sue survives in

favour of persons proposed to be brought on record, there appears to be no impediment in accepting the prayer made in the instant application.

In view of above, application is allowed. legal representatives 1(h)(i) to 1(h)(iii) are ordered to be substituted in place of respondent No. 1(h), whose name is ordered to be deleted from the array of parties. Registry to carry out necessary corrections in the memo of parties on the basis of amended memo of parties annexed with the application. Application stands disposed of.

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Since, Mr. Lakshay Thakur, Advocate has definite instructions to appear on behalf of newly impleaded respondents, issuance of notice to them is dispensed with. Mr. Lakshay Thakur, Advocate prays for and is granted two weeks' time to file Power of Attorney on behalf of newly impleaded respondents.

Since appeal stands admitted and parties stand duly represented, list for hearing in due course.

Record, if not received, be requisitioned.

(Sandeep Sharma)
Judge

December 6, 2022
(vikrant)