

**Rajinder Singh Vs. Hari Singh & ors.****RSA No. 571 of 2006**

10.7.2024

Present: Mr. Sumit Sharma, Advocate, vice Mr. B.C. Verma, Advocate, for the appellant.

Mr. Mukul Sood, Advocate, for respondents No. 2(a) to 2(c).

Mr. Manish Dhatwalia, Advocate, for respondents No. 3(i) to 3(iii).

None for respondents No. 1 and 4.

CMP(M) No. 1533 of 2023

The proposed LRs, in this case, were served on 26.2.2024. Thereafter, two effective opportunities have been granted to file reply, however, reply has not been filed. Further wait is not justifiable.

By way of consolidated application, filed under Order 22 Rule 4 and 9 IPC read with Section 5 of the Limitation Act, a prayer has been made to bring on record the LRs of respondent No. 3 Amar Singh. Respondent No. 3, as per the application, expired on 20.8.2022.

Law regarding impleadment of the legal representatives has elaborately been discussed by Hon'ble Supreme Court in case titled as '**Perumon Bhagvathy Devaswom versus Bhargavi Amma (dead) by LRs and others**', reported in (2008) 8 SCC 321. Relevant paragraphs 13 and 16 of the judgment are reproduced, as under:



“13. The principles applicable in considering applications for setting aside abatement may thus be summarized 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 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 bonafides, 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.

(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.

16. In contrast, when an appeal is pending in a High Court, dates of hearing are not fixed periodically. Once the appeal is admitted, it virtually goes into storage and is listed before the Court only when it is ripe for hearing or when some application seeking an interim direction is filed. It is common for appeals pending in High Courts not to be listed at all for several years. (In some courts where there is a huge pendency, the non-hearing period may be as much as then years or even more.) When the appeal is admitted by the High Court, the counsel inform the parties that they will get in touch as and when the case is listed for hearing. There is nothing the appellant is required to do during the period between admission of the appeal and listing of the appeal for arguments (except filing paper books or depositing the charges for preparation of paper books wherever necessary). The High Courts are overloaded with appeals and the litigant is in no way responsible for non-listing for several years. There is no need for the appellant to keep track whether the respondent is dead or alive by periodical enquiries during the long period between admission and listing for hearing. When an appeal is so kept pending in suspended



animation for a large number of years in the High Court without any date being fixed for hearing, there is no likelihood of the appellant becoming aware of the death of the respondent, unless both lived in the immediate vicinity or were related or the court issues a notice to him informing the death of the respondent.”

If the admitted position of facts is seen, in light of the decision of the Hon'ble Supreme Court in Perumon Bhagvathy Devaswom's case (supra), then, the delay in filing the present application has been explained, to the judicial satisfaction of this Court, by the applicant. Consequently, the present application is allowed. LRs of respondent No. 3 are ordered to be brought on record as respondents No.3(i) to 3(iii), by condoning the delay, as well as, setting aside the abatement, if any.

With these observations, application is disposed of.

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List for final hearing on 7.8.2024. Amended memo of parties be filed in the meanwhile.

Learned counsel appearing for respondents No. 3(i) to 3(iii) is directed to follow up with the Registry for removal of objections, raised



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in the power of attorney, on behalf of respondents

No. 3(i) to 3(iii).

(Virender Singh)
Judge

July 10, 2024
(kalpana)