

Bhunger Ram Bhatia v. Jagdish

RFA No. 4030 of 2013

27.7.2023 Present: Mr. Arun Kumar, Advocate vice Mr. Raju Ram Rahi, Advocate, for the appellant.

CMP.M Nos 4 and 5 of 2023

By way of instant applications filed under Order 22 Rules 4 and 9 read with Section 5 of the Limitation Act, prayer has been made by the applicant/appellant, for bringing on record the LRs of deceased respondent No.3 after condonation of delay and setting aside abatement, if any. Since LRs of the aforesaid deceased respondent were not served through ordinary process, they, on the request having been made by applicant/appellant, were ordered to be served by way of publication. Though aforesaid respondents were duly served for today's date by way of publication, but yet none came present on their behalf and as such, they are proceeded against ex-parte.

Having perused explanation rendered on record qua the delay in filing the application under Order 22 Rules 4 and 9 CPC, this Court is convinced and satisfied that delay in maintaining the accompanying application is neither intentional nor willful, rather same has occurred owing to circumstances, which were completely beyond the control of the applicant, and as such, same is condoned and abatement, if any, is also set-aside.

Careful perusal of averments contained in para-2 of the application bearing CMP.M No. 4 of 2023 reveals that

respondent No.3 Durga Ram has expired on 9.9.2011, leaving behind LRs as detailed in para-5 of the application. Since right to sue survives in favour of the persons proposed to be substituted in place of deceased respondent No.3, there appears to be no impediment in accepting the prayer made in the application and accordingly, same is allowed and persons detailed in para-5 of the application are ordered to be substituted in place of deceased respondent No.3, whose name otherwise is ordered to be deleted from the array of parties. Registry to carry out necessary correction in the memo of parties on the basis of amended memo of parties annexed with the application. Applications stand disposed of.

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Notices to the newly impleaded respondents be issued returnable within four weeks, on taking steps within one week.

July 27, 2023
manjit

**(Sandeep Sharma),
Judge**