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

% ***Judgment reserved on: 07.09.2026***
Judgment pronounced on: 18.11.2026

\# **CNR No. DLHC010748372023**

\+ EX.F.A. 1/2023

KISHAN LAL DECEASED THROUGH LRS & ORS.
.....Appellants

Through: Mr. Rajesh Yadav, Sr. Advocate with Mr. Tanmay Nagar, Mr. Gurpreet Singh Sethi, Ms. Shamli Verma and Mr. Kapil Kumar, Advs.

versus

R K ASSOCIATES .....Respondent

Through: Mr. Sachin Gupta and Ms. Anupriya, Advs.

\# **CNR No. DLHC010748362023**

\+ EX.F.A. 2/2023 & CM APPL. 25392/2024 (Exemption)

KISHAN LAL SINCE DECEASED THROUGH LRS & ORS.
.....Appellants

Through: Mr. Rajesh Yadav, Sr. Advocate with Mr. Tanmay Nagar, Mr. Gurpreet Singh Sethi, Ms. Shamli Verma and Mr. Kapil Kumar, Advs.

versus

R.K ASSOCIATES .....Respondent

Through: Mr. Sachin Gupta and Ms. Anupriya, Advs.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

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J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

CM APPL. 24996/2024 (Recalling of the order dt. 28.07.2023) & CM APPL. 24997/2024 (Delay of 235 days in filing the application in EX.F.A. 1/2023
CM APPL. 25390/2024 (Recalling of the order dt. 28.07.2023), CM APPL. 25391/2024 (Delay of 235 days in filing the application) & CM APPL. 25392/2024 (Ex.) in EX.F.A. 2/2023

1. The present Applications, CM APPL. Nos. 24997/2024 and 25391/2024, have been filed on behalf of the Appellants under Section 5 of the **Limitation Act, 1963**[1], seeking condonation of delay in filing the respective applications for recall and restoration, CM APPL. Nos. 24996/2024 and 25390/2024. The recall and restoration applications, in turn, have been filed under Section 151 of the **Code of Civil Procedure, 1908**[2], seeking recall of the **Common Order dated 28.07.2023**[3] and restoration of the main Appeals, EX.F.A. Nos. 1/2023 and 2/2023, both titled *Kishan Lal (since deceased) through LRs & Ors. v. R.K. Associates*, to their original numbers.

2. The Appeals were preferred under Order XXI Rule 58 read with Section 151 of the CPC, assailing the **distinct Orders, both dated 20.12.2022**[4], passed by the learned **Additional District Judge-07, South-East District, Saket Courts, New Delhi**[5], in Execution Application Nos. 146/2022 and 138/2022, both titled *R.K. Associates v. Kishan Lal (deceased) through LRs*. By the said Orders, the objections preferred by the Judgment Debtors were dismissed, and directions were issued, *inter alia*, for taking possession of the subject

[1] Limitation Act
[2] CPC
[3] Common Order
[4] Impugned Orders
[5] Executing Court

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properties with police assistance.

3. The underlying execution proceedings arise out of decrees for possession in respect of two plots of land measuring 600 square yards and 200 square yards, *respectively*, forming part of Khasra No. 75, situated at Village Zamrudpur, Delhi. EX.F.A. 1/2023 pertains to the property measuring 600 square yards and the corresponding proceedings in Execution Application No. 146/2022, whereas EX.F.A. 2/2023 pertains to the property measuring 200 square yards and the corresponding proceedings in Execution Application No. 138/2022.

4. Both Appeals were dismissed for non-prosecution by this Court *vide* Common Order, as none appeared on behalf of the Appellants when the matters were taken up. The Order also records the submission made on behalf of the Respondent that physical possession of the subject property had already been recovered.

5. Since the Applications seeking condonation of delay and restoration in both Appeals raise substantially similar grounds, they were reserved for consideration together and are being disposed of by way of the present common Judgment. The explanations furnished by the Appellants regarding their alleged lack of knowledge of the dismissal, the conduct attributed to their erstwhile counsel, the engagement of new counsel and the subsequent retrieval of the case files are materially similar in both matters.

6. Accordingly, the common questions arising for consideration are examined together, while the facts and reliefs specific to each Appeal are considered separately wherever necessary.

BRIEF FACTS:

7. The dispute emanates from execution proceedings initiated by

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the Respondent, M/s R.K. Associates, for enforcement of decrees for possession passed in its favour in CS No. 305/2009 and CS No. 304/2009, *vide* judgment dated 05.03.2011. The decrees concern parcels of land measuring 600 square yards and 200 square yards, *respectively*, forming part of Khasra No. 75, situated at Village Zamrudpur, Delhi. In execution of the said decrees, proceedings were instituted as Execution Application Nos. 146/2022 and 138/2022.

8. During the course of the execution proceedings, objections under Order XXI Rule 97 of the CPC were raised on behalf of the Judgment Debtors/ the Appellants herein. *Vide* Order dated 20.12.2022, the learned Executing Court rejected the objections and issued consequential directions concerning execution of the decrees, including the taking of possession with police assistance. Aggrieved thereby, the Appellants preferred the aforesaid Appeals before this Court.

9. On 28.07.2023, when both Appeals were taken up together by this Court, neither the Appellants nor their counsel appeared. Consequently, by a common order, both Appeals were dismissed for non-prosecution.

10. The present applications, each dated 23.04.2024, have been filed in the respective Appeals seeking condonation of delay in filing the recall/restoration application and recall of the common order, thereby restoring both Appeals.

11. The principal explanation advanced by the Appellants is that their erstwhile counsel, Sh. Shivom Garg, did not inform them about the dismissal of the Appeals and did not provide the requisite case files despite follow-ups. They contend that they continued to pursue the execution proceedings under the impression that their interests

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were being duly protected. It is further averred that one of the legal representatives, Mr. Rajesh Kumar, is illiterate and belongs to a rural background.

12. The Appellants state that they engaged new counsel in the first week of February 2024, whereupon they learnt of the dismissal of the Appeals. They further assert that the relevant files were ultimately obtained on 20.03.2024, after which steps were taken to institute the Applications for restoration of those Appeals. The Applications state the delay as 235 days. The computation of the period of delay, however, requires consideration with reference to the date of dismissal, the prescribed period of limitation and the date of institution of the Applications.

13. In the applications, the Appellants have also referred to subsequent developments in the execution proceedings before the learned Executing Court. They rely on these developments to support their contention that the issues raised in the main Appeals are substantive issues between the parties and warrant consideration on the merits.

14. In these circumstances, the present Applications require consideration of the explanation furnished for the Appellants' non-appearance and the delay in seeking restoration.

15. It is clarified that, at this stage, this Court is concerned only with the merits of these Applications. The merits of the Appeals would arise for consideration at a later stage, and only if the Applications are allowed.

<u>SUBMISSIONS ON BEHALF OF THE APPELLANTS</u>:

16. Learned senior counsel appearing on behalf of the Appellants

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would submit that the Appeals were dismissed solely on account of non-appearance and were not adjudicated on merits. It would be contended that the Appellants never intended to abandon their challenge to the Impugned Orders and that their absence was neither deliberate nor intentional.

17. Learned senior counsel would submit that the Appellants had been relying upon their erstwhile counsel for conducting the litigation and were not informed that the Appeals had been dismissed on 28.07.2023. It would be contended that the Appellants continued to participate in the proceedings before the learned Executing Court under the *bona fide* impression that their interests were being duly protected. Their continued participation in the execution proceedings, according to learned senior counsel, ought not to be treated as proof of their knowledge of the dismissal of the Appeals.

18. It would further be submitted that the Appellants attempted to obtain the requisite case files from their erstwhile counsel after engaging new counsel in the first week of February 2024. However, the former counsel allegedly failed to provide the files and represented that the same could not be traced owing to the shifting of his office. The Appellants state that the requisite files were ultimately received on 20.03.2024, following which the present Applications were filed.

19. Learned senior counsel would also rely upon the subsequent Orders passed in the execution proceedings, particularly the Orders dated 13.01.2023 and 07.02.2024, to contend that questions concerning the extent of possession delivered, identification of the decretal properties and demarcation of the remaining land continue to arise.

20. It would be urged that these developments have a material

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bearing on the underlying Appeals and that the Appellants ought not to be deprived of an opportunity to pursue their challenge on merits solely on account of their absence on the date of hearing.

21. Learned senior counsel would contend that the delay was neither deliberate nor attributable to any wilful negligence on the part of the Appellants. It would be submitted that the expression "*sufficient cause*" ought to receive a liberal construction so as to advance substantial justice and that no irreparable prejudice would be caused to the Respondent if the Appeals were restored and considered on merits.

22. Accordingly, the Appellants pray that the delay be condoned, the Common Order be recalled, and both Appeals be restored to their original numbers.

23. Besides the above, no other submissions were advanced on behalf of the Appellants.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

24. ***Per contra,*** learned counsel appearing on behalf of the Respondent would oppose the Applications and submit that the Appellants have failed to furnish any cogent or satisfactory explanation for the delay in seeking restoration. It would be contended that the Appeals were dismissed on 28.07.2023, whereas the Applications were filed only on 23.04.2024, and that the explanation furnished does not account for the entire period of delay.

25. Learned counsel would submit that the Appellants seek to attribute the delay entirely to their erstwhile counsel, Sh. Shivom Garg, alleging that he failed to inform them of the dismissal and withheld the relevant files. These allegations, according to the Respondent, are inconsistent with the record of the execution

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proceedings, which reflects that the erstwhile counsel continued to appear on behalf of the Appellants after the dismissal of the Appeals.

26. In this regard, learned counsel would refer to the appearances of the erstwhile counsel before the learned executing court on 04.08.2023, 06.12.2023 and 19.12.2023, amongst other dates. It would further be pointed out that the Order dated 01.09.2023 records that the Appeals had been dismissed for default. According to the Respondent, these circumstances materially undermine the Appellants' plea that they remained unaware of the status of the Appeals.

27. Learned counsel would also refer to the proceedings dated 16.01.2024 and 22.01.2024 before the learned Executing Court. It would be submitted that, on 16.01.2024, the Appellant, Mr. Rajesh Kumar, appeared and sought an adjournment on the ground that counsel was unavailable owing to illness. On 22.01.2024, Mr. Rajesh Kumar is stated to have informed the learned Executing Court that the Appellants intended to change their counsel and that their erstwhile counsel was not providing the case file. The Respondent would contend that these proceedings demonstrate that the Appellants were aware of the difficulties concerning their representation before the Applications for restoration were instituted.

28. It would further be contended that the alleged illiteracy and rural background of one of the Appellants cannot, by themselves, constitute sufficient cause for condonation of delay.

29. Learned counsel would submit that the Appellants have been pursuing the underlying litigation and execution proceedings for several years and have not placed satisfactory material on record to demonstrate that the alleged conduct of their former counsel prevented them from approaching this Court within the prescribed period.

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30. With regard to the subsequent Orders passed in the execution proceedings, learned counsel would submit that the Orders concerning delivery of possession and demarcation of the remaining property do not explain the Appellants' non-appearance on 28.07.2023 or the delay in filing the Applications for restoration.

31. It would, accordingly, be prayed that the Applications seeking condonation of delay and restoration of both Appeals be dismissed.

32. Besides the above, no other submissions were advanced on behalf of the Respondents.

ANALYSIS:

33. This Court has heard learned counsel appearing on behalf of the parties, and with their able assistance, carefully perused the material on record.

34. At the outset, it is apposite to note that the present Applications seek condonation of delay in filing the respective applications for recall and restoration, and restoration of EX.F.A. Nos. 1/2023 and 2/2023 to their original numbers. The Appellants have also sought permission to place on record subsequent developments and orders in the execution proceedings, particularly those concerning the identification and demarcation of the remaining decretal properties.

35. Since the grounds urged in support of the Applications are substantially similar, the common questions arising for consideration are being examined together.

36. It is noted that Article 122 of the Schedule to the Limitation Act prescribes a period of thirty (30) days for an application seeking to set aside a decree passed *ex parte* or to re-admit an Appeal or Application dismissed for default of appearance or for want of prosecution. Insofar

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as the application for restoration having been filed beyond the prescribed period, the Appellants have invoked Section 5 of the Limitation Act, which empowers the Court to admit an application after the expiry of the prescribed period if the applicant satisfies the Court that there was sufficient cause for not preferring the same within such period.

37. The power to restore an Appeal dismissed for default is traceable to Order XLI Rule 19 of the CPC, read with the applicable procedural provisions and the inherent powers of the Court under Section 151 CPC. The exercise of such power is, however, contingent upon the applicant satisfying the requisite statutory conditions. The jurisdiction to condone delay is discretionary and cannot be exercised merely on the asking of the applicant. The Court therefore must be satisfied that the explanation furnished by the applicant constitutes sufficient cause and is consistent with the conduct of the party seeking such indulgence.

38. It is well settled that the expression "*sufficient cause*" must be construed in a manner that advances substantial justice, and an application for condonation should not be rejected solely because the delay is lengthy. But a liberal approach does not make condonation automatic. The applicant must provide a *bona fide*, reasonable and sufficiently detailed account of the delay, including the material circumstances that prevented timely action and the steps taken once the impediment ceased. The explanation should be assessed as a whole and tested against the contemporaneous record, the applicant's conduct throughout the relevant period, and whether the applicant acted with reasonable diligence.

39. The length of the delay is relevant but is not, by itself, decisive;

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equally, the general appeal to substantial justice cannot cure unexplained periods of inaction, material inconsistencies, or conduct that indicates negligence or a lack of *bona fides*. The Court must therefore determine whether the Appellants' explanation is credible, accounts for the material periods of delay, and, viewed in light of the record and their conduct, establishes sufficient cause for their delay in approaching this Court.

40. In the present case, the restoration is sought by the Applicants/Appellants primarily by foisting the entire onus for the dismissal of the Appeal on their erstwhile counsel, Sh. Shivom Garg. The Applicant/Appellants allege that Sh. Shivom Garg failed to attend to them properly, as a result of which they engaged a new counsel; failed to inform them that the Appeal had been dismissed; and failed to provide the requisite case files in a timely manner. It is asserted that the Appellants came to know of the dismissal only upon engaging new counsel and thereafter obtaining the relevant documents. The explanation is sought to be supplemented by the plea that Appellant Mr. Rajesh Kumar is illiterate and belongs to a rural background.

41. In the considered opinion of this Court, the aforesaid explanation, however, cannot be considered in isolation from the record of the execution proceedings. The material placed before this Court by the parties indicates that the erstwhile counsel continued to appear on behalf of the Appellants before the learned Executing Court even after the Appeal had been dismissed on 28.07.2023.

42. The record reflects his appearance on, *inter alia*, 04.08.2023, 06.12.2023 and 19.12.2023. Further, the Order dated 01.09.2023 passed by the learned Executing Court specifically records that the Appeals had been dismissed for default.

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43. The aforesaid circumstances assume significance because the Appellants seek to attribute the entire delay to their lack of knowledge of the dismissal and the alleged failure of their erstwhile counsel to communicate the same. The continued appearance of the said counsel in the execution proceedings, coupled with the record of those proceedings, renders the explanation of complete ignorance insufficiently convincing. The Appellants have not satisfactorily explained how, despite the continued conduct of the execution proceedings through their counsel, they remained unaware of the status of their appeal for the period in question.

44. It is undoubtedly true that a litigant ought not ordinarily to be made to suffer for a *bona fide* lapse on the part of counsel. However, such a principle cannot be applied mechanically, irrespective of the conduct of the litigant or the surrounding circumstances.

45. The Court is required to examine whether the litigant himself acted with reasonable diligence and whether the alleged lapse of counsel genuinely accounts for the delay sought to be condoned. A general allegation that counsel failed to communicate an order cannot, in every case, suffice to establish sufficient cause, particularly where the contemporaneous record indicates continued participation in related proceedings.

46. In the present case, this court is of the considered opinion that the Appellants have not satisfactorily demonstrated that they exercised reasonable diligence in keeping themselves apprised of the progress of the Appeals or that the alleged conduct of their erstwhile counsel prevented them from taking timely steps to seek restoration.

47. The fact that counsel continued to represent them before the executing court is a material circumstance which cannot be

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disregarded merely on the basis of the subsequent assertion that the Appellants were unaware of the dismissal. In fact, the same is belied by the presence of Mr. Rajesh Kumar in Court on 01.09.2023, on which date the executing Court records the factum of the dismissal of the Appeal.

48. Furthermore, the explanation that Mr. Rajesh Kumar is "illiterate" is not borne out from the record. There is nothing to substantiate the said assertion. To the contrary, the record is replete with pleadings and affidavits of Mr. Rajesh Kumar, as in the present Appeals, which he has signed in English. The record of the Executing Court also shows that the JDs were making repeated payments to the DH. Furthermore, the record indicates that the Applicants/ Appellants were personally present during the execution proceedings on various dates and appeared to be pursuing the same diligently.

49. The Appellants/Applicants were evidently aware of the seriousness of the matter and diligently attended the execution proceedings. This Court fails to understand or comprehend and cannot discern any reason from the pleadings as to why no such diligence was shown in respect of the Appeals. The fact that the erstwhile Counsel Mr. Garg was attending to the execution proceedings and the JD/ Applicants/ Appellants were present personally with the said advocate on various occasions is also contrary to the averment made that the advocate was not attending properly to the Appellant/ Applicants. It is difficult to believe that the Applicants/ Appellants herein were not aware of the dismissal considering the entire conspectus of the facts. The explanation furnished, therefore, does not adequately account for the delay in approaching this Court.

50. The Appellants had been pursuing the underlying litigation and

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were represented in the execution proceedings. In these circumstances, the plea of lack of familiarity with legal procedure, without a satisfactory explanation of the steps taken to remain informed about the Appeal proceedings, cannot independently justify condonation of the delay.

51. Further, the contention that the requisite case files were obtained only on 20.03.2024 also does not satisfactorily explain the entire period of delay. The Appellants assert that new counsel was engaged in the first week of February 2024 and that the previous counsel had failed to provide the files owing to their alleged unavailability following the shifting of his office.

52. Even accepting that some time was required to obtain the documents, the Appellants were required to explain, with reasonable specificity, the circumstances that prevented them from seeking restoration earlier and the steps taken by them during the intervening period. The explanation, when considered alongside the continued appearances in the execution proceedings and the absence of a convincing account of the Appellants' own diligence, does not meet the requisite threshold.

53. It is also relevant that, on 22.01.2024, Mr. Rajesh Kumar is stated to have informed the learned Executing Court that the Appellants intended to change their counsel and that their erstwhile counsel was not providing the case file. The subsequent engagement of new counsel and the proceedings which followed do not, by themselves, establish sufficient cause for the entire delay in seeking restoration. The burden remained upon the Appellants to provide a coherent explanation covering the material period of delay. In the considered opinion of this Court, that burden has not been discharged.

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54. This Court is, therefore, unable to accept the explanation furnished by the Appellants as constituting sufficient cause in law, which is the sole criterion for determining whether the delay may be condoned in the present circumstances.

55. The continued representation of the Appellants by their erstwhile counsel in the execution proceedings, the absence of a satisfactory explanation for the failure to pursue the status of the Appeal, and the lack of adequate particulars demonstrating due diligence collectively militate against the exercise of discretion in their favour. The application seeking condonation of delay is, accordingly, liable to be dismissed.

56. This Court also takes note of the fact that though serious allegations have been made against the erstwhile counsel, there appear to be no steps taken in furtherance of the same. There appears to be no complaint made to the Bar Council or even a communication addressed to the concerned counsel. The allegations, being unsubstantiated by any action taken, do not inspire the confidence of the Court.

57. Since both Applications, i.e., for Restoration/ recall of the order of dismissal for non-prosecution, as also the Application for condonation of delay in preferring the said applications, set out almost identical grounds, the discussion above would encompass the contentions raised in both.

58. The Appeals came to be dismissed on 28.07.2023 on account of non-appearance on behalf of the Appellants. The Appellants seek recall of that Order primarily on the ground that they were not informed of the dismissal by their erstwhile counsel. For the reasons already discussed, the explanation does not inspire the Court's

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confidence.

59. The Court is conscious that restoration of an Appeal dismissed for non-prosecution is intended to ensure that a litigant is not denied an opportunity of hearing where the default is satisfactorily explained. However, restoration is not an automatic consequence of an Application being made, nor can it be granted merely because the underlying dispute concerns property or execution of a decree. The applicant must establish sufficient cause for the non-appearance and satisfy the Court that the request for restoration is *bona fide*. In the present case, the explanation furnished by the Appellants, in the opinion of this Court, is wholly unsatisfactory.

60. The Appellants have also relied upon subsequent developments in the execution proceedings, particularly the Orders dated 13.01.2023 and 07.02.2024. The order dated 13.01.2023 records that possession of 650 square yards had been delivered against an entitlement of 800 square yards, while the Order dated 07.02.2024 refers to the need for certainty regarding the dimensions and identification of the remaining property and directs demarcation through the concerned SDM.

61. These developments may bear upon the manner in which the decree is to be executed and the issues arising before the learned executing court. They do not, however, explain the Appellants' failure to appear when the Appeal was listed before this Court or their subsequent delay in seeking its restoration.

62. The issue before this Court, at this stage, is not whether the subsequent execution proceedings raise questions concerning identification or demarcation of the decretal property. The issue is whether the Appellants have established a sufficient basis for recalling the Common Order and restoring the Appeals.

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63. The existence of subsequent proceedings or Orders cannot, by itself, cure the failure to establish sufficient cause for the default and the delay. Any rights or remedies available to the parties in relation to the execution of the decree would have to be pursued in accordance with law before the competent forum.

CONCLUSION:

64. In view of the foregoing discussion, this Court finds that the Appellants have failed to furnish a satisfactory explanation for the delay in filing the Applications for restoration. The record of the execution proceedings, particularly the continued appearances of their erstwhile counsel, materially undermines the plea that the Appellants remained unaware of the status of the Appeal.

65. Independently, the Appellants have failed to establish sufficient cause for their non-appearance when the Appeals were called on for hearing on 28.07.2023. The alleged lack of vigilance on the part of the Appellants cannot, in the facts of the present case, be converted into sufficient cause merely by attributing the delay to their previous counsel.

66. Accordingly, the Applications seeking condonation of delay in filing the respective Applications for restoration are dismissed.

67. Consequently, the Applications seeking recall of the Common Order dated 28.07.2023 and restoration of EX.F.A. 1/2023 and EX.F.A. 2/2023 to their original numbers are also dismissed.

68. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 18, 2026/JK

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