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

% ***Judgment reserved on: 14.08.2026***
Judgment pronounced on: 19.11.2026

\+ RFA 515/2014

SH. KISHORI LAL & ORS .....Appellants
Through: Mr. V.P. Rana, Mr. Aviral Jain and Ms. Rut Pawar, Advocates.

versus

SH. LONGA RAM (SINCE DECEASED) THROUGH HIS LRS & ANR .....Respondents
Through: Mr. Ram Kishan Saini and Ms. Neelam Saini, Advocates for R-1E.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

O.A.(APPLT) 1/2026

1. This Chamber Appeal under Chapter II Rule 5, read with Chapter I, Part D, Volume V, Rules 14 to 16 of the Delhi High Court Rules has been filed by Respondent No. 1(E) in the captioned **Regular First Appeal**[1].

2. The Chamber Appeal essentially assails the **Order dated 20.07.2026**[2] passed by the learned Registrar of this Court. However, the relief expressly sought in the Chamber Appeal is an order

[1] RFA
[2] Impugned Order

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declaring that RFA No. 515/2014, titled *Sh. Kishori Lal and Others v. Sh. Longa Ram and Others*, has stood abated.

3. At the outset, it is noted that the express relief sought in the Chamber Appeal widens the scope of examination done in the Impugned Order. By that Order, the learned Registrar allowed ***CM APPL. Nos. 775/2025 and 776/2025***, filed under Order XXII Rule 4 of the **Code of Civil Procedure, 1908**[3], to bring on record the Legal Representatives of deceased Respondent Nos. 1(A) and 1(B), *respectively*. Similarly, the learned Registrar also allowed ***CM APPL. No. 41635/2025***, seeking substitution of the Legal Representatives of deceased Respondent No. 1(G), and ***CM APPL. No. 41636/2025***, seeking condonation of delay in filing that substitution application.

4. It is made clear that this Court will examine the correctness of the Impugned Order in the discussion that follows. If the Impugned Order is set aside or modified, in whole or in part, the question of continuing the abatement of the main RFA will arise for consideration. Otherwise, deciding the relief sought in the Chamber Appeal would be academic.

5. For clarity and to avoid ambiguity, the parties are referred to by their respective ranks in the captioned RFA, rather than by their ranks in the Chamber Appeal.

BRIEF FACTS:

6. *Sine superfluis*, the facts germane to the institution of the present Chamber Appeal are as follows:

(a) The RFA came to be filed by the Appellants seeking to assail the Judgment and Decree dated 06.06.2014 passed by the

[3] CPC

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learned Additional District Judge-17, Tis Hazari Courts, Delhi, in Civil Suit No. 221/2014 (*Old Suit No. 160/2003*).

(b) During the pendency of the suit, original Respondent No. 1 died. His Legal Representatives were thereafter brought on record and are arrayed in the present appeal as Respondent Nos. 1(A) to 1(J).

(c) During the pendency of the captioned RFA, the following Legal Representatives of original Respondent No. 1, Sh. Longa Ram, passed away:

(i) Respondent No. 1(A) - Sh. Om Prakash,

(ii) Respondent No. 1(B) - Sh. Jagdish Chandra, and

(iii) Respondent No. 1(G) - Smt. Prem/Premwati.

(d) The material on record reveals that Respondent Nos. R1(A), R1(B) and R1(G) passed away on 15.06.2020, 21.06.2023 and 27.12.2024, *respectively*.

(e) Accordingly, on 07.01.2025, ***CM APPL. Nos. 775/2025 and 776/2025*** were filed, seeking to bring on record the Legal Representatives of Respondent Nos. 1(A) and 1(B), *respectively*. Subsequently, on 12.07.2025, ***CM APPL. No. 41635/2025*** was filed to bring on record the legal representative of Respondent No. 1(G), along with ***CM APPL. No. 41636/2025*** seeking condonation of delay in filing that application.

(f) By the Impugned Order, the learned Registrar, after hearing the parties' objections, allowed all the aforementioned applications filed by the Appellants. The sole ground of objection to each application seeking to bring the deceased Respondents' Legal Representatives on record was delay in filing that application.

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(g) Aggrieved by the aforesaid composite Impugned Order concerning the aforementioned applications, Respondent No. 1(E) has preferred the present Chamber Appeal, assailing the findings recorded in respect of those applications.

SUBMISSIONS ON BEHALF OF THE PARTIES:

7. Learned counsel appearing for Respondent No. 1(E) **[*who has filed the present Chamber Appeal*]** would seek to assail the Impugned Order on the ground that the Applications for substitution have been allowed without due regard to the statutory provisions governing limitation and abatement under Order XXII of the CPC and the **Limitation Act, 1963**[4].

8. *With respect to CM APPL. Nos. 775/2025 and 776/2025*, learned counsel would submit that Respondent Nos. 1(A) and 1(B) died on 15.06.2020 and 21.06.2023, *respectively*, whereas the applications to bring their Legal Representatives on record were filed only on 07.01.2025. The applications were thus filed after delays of 4 years and 206 days and 1 year and 200 days, *respectively*.

9. Learned counsel would further contend that, under Order XXII Rule 4 of the CPC, the prescribed period of 90 days for applying to bring the Legal Representatives of each deceased Respondent on record had expired well before the substitution applications were filed. Learned counsel would also submit that neither substitution application was accompanied by an application seeking condonation of delay or setting aside of the abatement. In the absence of such applications, it would be contended, the learned Registrar could not have allowed the Legal Representatives to be brought on record.

[4] Limitation Act

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Signing Date:21.11.2026 15:13:24

10. *Adverting to CM APPL. Nos. 41635/2025 and 41636/2025*, concerning Respondent No. 1(G), learned counsel would submit that the Order dated 24.02.2025 clearly recorded that the particulars of the Legal Representatives had already been supplied to the Appellants' counsel. It would be argued that the explanation subsequently furnished, *namely*, that the particulars were received only on 10.07.2025 through WhatsApp, was contrary to the judicial record.

11. Learned counsel would further rely upon the Order dated 09.07.2025, whereby the learned counsel for the Appellants had sought and obtained four weeks' time to file an Application for substitution. According to Respondent No. 1(E), this Order demonstrated that the Appellants were already aware of the death and the requirement to take steps for substitution. Respondent No. 1(E) also disputed the assertion regarding the WhatsApp communication, contending that the number referred to in the Application belonged to the Appellants' own counsel and not to counsel for Respondent Nos. 1(D) to 1(J).

12. It would further be submitted that the delay in filing CM APPL. No. 41635/2025 had been incorrectly computed as 105 days and was, in fact, 136 days. It would be contended by the learned counsel appearing for Respondent No. 1(E) that no sufficient cause had been disclosed for condoning the delay and that the application seeking substitution could not have been allowed without an appropriate application for setting aside abatement.

13. Learned counsel appearing on behalf of Respondent No. 1(E) would seek to rely upon the judgments passed in ***Dhurandhar Prasad***

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Signing Date:21.11.2026 15:13:24

Singh v. Jai Prakash University[5], ***Om Prakash Gupta v. Satish Chandra***[6], ***State of Kerala v. Madhavakurup Ramachandran Pillai***[7], ***Goman Wanti v. Darshan Singh***[8], and ***Nethra Chits (Pvt.) Ltd. v. B. Ramachandra Reddy***[9].

14. ***Per contra***, learned counsel appearing for the Appellants **[*of the RFA*]** would, at the outset, submit that Bhupinder Singh (Respondent No. 1(E)) has filed the present Chamber Appeal in his personal capacity. Before the learned Registrar, however, he had filed objections to the substitution applications in his capacity as attorney for deceased Respondent Nos. 1(A), 1(B) and 1(G).

15. It would be contended that, upon the death of the principals, the agency stood terminated by operation of Section 201 of the Indian Contract Act, 1872. Accordingly, the objections filed by Respondent No. 1(E) could not be treated as having been filed by or on behalf of the Legal Representatives of the deceased Respondents. Since those Legal Representatives did not independently challenge the orders allowing the substitution applications, learned counsel would submit that Respondent No. 1(E), having *no locus* to maintain the present Chamber Appeal in his personal capacity, cannot pursue it.

16. *With regard to CM APPL. Nos. 775/2025 and 776/2025*, learned counsel would submit that information regarding the deaths of Respondent Nos. 1(A) and 1(B) was furnished on 25.11.2024 and that the particulars of their Legal Representatives were supplied on 08.12.2024. Since the substitution applications were filed on 07.01.2025, it would be contended that they had been filed within 90

[5] (2001) 6 SCC 534
[6] 2025 SCC OnLine SC 291
[7] 1999 SCC OnLine Ker 99
[8] 2006 SCC OnLine P&H 111
[9] 2003 SCC OnLine AP 620

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Signing Date:21.11.2026 15:13:24

days of receipt of the particulars necessary for effecting substitution. The learned Registrar had, therefore, correctly considered the dates on which the information and particulars were furnished instead of treating the applications as barred solely by reference to the dates of death.

17. Learned counsel would further submit that Order XXII Rule 10A CPC places an obligation upon a pleader appearing for a deceased party to inform the Court about the death of that party. Reliance in that regard would be placed upon ***Binod Pathak and Others v. Shankar Choudhary and Others***[10], particularly paragraphs 29, 50 and 63, to contend that the obligation to facilitate the bringing of Legal Representatives on record cannot be construed narrowly so as to permit a party to take advantage of a failure to furnish the requisite information and thereby defeat the proceedings.

18. In relation to *CM APPL. Nos. 41635/2025 and 41636/2025*, learned counsel would submit that the particulars of her Legal Representatives were furnished on 10.07.2025 through WhatsApp and that CM APPL. No. 41635/2025 was filed on 13.07.2025. It would be contended that the application had been filed promptly after receipt of the particulars and that CM APPL. No. 41636/2025 specifically sought condonation of delay under Section 5 of the Limitation Act, on the ground that the particulars had been received only on 10.07.2025.

19. Learned counsel would further submit that it is also pertinent to note that the Application seeking condonation of delay, being *CM APPL. No. 41636/2025*, avers that the date on which the learned counsel for the Respondent so heavily relies upon, i.e., Order dated 24.02.2025, which records that the information of the demise of

[10] 2025 SCC OnLine SC 1411

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Signing Date:21.11.2026 15:13:24

Respondent No. 1(G) along with the details of her LRs was provided to the counsel for the Appellant, none had appeared for the Appellant and no such information as on that date was received by the learned counsel representing the Appellant.

20. It would be further submitted that in support of the assertion that the relevant details concerning the deceased Respondent were received on 10.07.2025, one of the Appellants' counsels has filed a personal affidavit along with the Application seeking condonation of delay, being *CM APPL. Nos. 41636/2025*.

21. Learned counsel would further rely upon ***Om Prakash @ Lalloowa v. Satish Chandra***[11], particularly paragraph 23, to submit that a prayer for bringing the Legal Representatives of a deceased party on record may, in an appropriate case, be construed as a prayer for setting aside abatement. Reliance would also be placed upon ***Mithailal Dalsangar Singh v. Annabai Devram Kini***[12], in support of the submission that the Court may grant appropriate consequential relief where the substance of the application and the relief sought justify such an approach.

22. Learned counsel would also seek to rely upon ***Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd***[13], particularly paragraphs 57 and 62, to contend that a separate application under Section 5 of the Limitation Act is not invariably necessary for the Court to exercise its power to condone delay. It would be submitted that, in the present case, an application seeking condonation of delay had, in any event, been filed in relation to the substitution of the Legal Representatives of Respondent No. 1(G).

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[11] 2025 SCC OnLine SC 291
[12] (2003) 10 SCC 691
[13] (2021) 7 SCC 313

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Signing Date:21.11.2026 15:13:24

ANALYSIS AND FINDINGS:

23. This Court has heard learned counsel for the parties and perused the material on record, including the Impugned Order, the relevant applications as before the Learned Registrar, and the Written Submissions filed in support of their respective contentions before this Court.

24. Succinctly put, the present Chamber Appeal concerns the correctness of the Impugned Order insofar as it allowed the substantive applications seeking to bring on record the Legal Representatives of deceased Respondent Nos. 1(A), 1(B) and 1(G). Although the applications were disposed of by a common order, each concerns a different deceased Respondent and arises from distinct factual circumstances. For clarity and consistency, this Court proposes to consider the challenges to the findings on each application under the similar headings and in the same order as in the Impugned Order.

A. CM APPL.775/2025 (u/O 22 Rule 4 CPC for bringing on record the LRs of R-1(A)and CM APPL.776/2025 (u/O 22 Rule 4 CPC for bringing on record the LRs of R-1(B))

25. Before proceeding further, it is apposite to reproduce the analysis and findings of the learned Registrar in the Impugned Order in respect of these two applications, which read as follows:

> *"**CM APPL.775/2025 (u/O 22 Rule 4 CPC moved by appellant for bringing on record the LRs of R-1(A)-Sh. Om Prakash and CM APPL.776/2025 (u/O 22 Rule 4 CPC moved by appellant for bringing on record the LRs of R-1(B)-Sh. Jagdish Chandra)***
>
> **1.** Learned counsel for the appellants submit that the information regarding death of respondent Nos.1A and 1B was furnished for the first time on 25.11.2024, which is reflected in the order of that date. Learned counsel further submits that it was directed vide the said order to learned counsel for the respondents to furnish him the details of legal heirs of the said deceased respondents within seven working days.

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Signing Date:21.11.2026 15:13:24

2. Learned counsel for appellants further submits that it was duty of learned counsel for the respondents to furnish him the details of proposed LRs in view of order dated 25.11.2024 and the details were furnished to him only on 08.12.2024, that too without death certificates of respondents. It is submitted that the application for bringing on record the LRs was filed on 06.01.2025 within the limitation period computed from the date of receiving the details of the LRs of deceased respondents.

3. Learned counsel for the proposed LRs of deceased respondents submit that the applications for substitution of LRs were filed beyond the limitation period. It is further submitted that it is the duty of the appellants to make enquires and collect the details of LRs of deceased respondent on his own and the duty of counsel for deceased respondent stops after furnishing the information with regard to the death of his client.

4. This Court does not agree with the submissions of learned counsel for proposed LRs made in para 3 above to the extent that duty of counsel of deceased respondent stops after furnishing the information with regard to death of his client and the said duty does not extend to furnishing of details of proposed legal representatives of deceased respondent. Hon'ble High Court of Andhra Pradesh in Food Corporation of India vs. Sri Ramchandra Boiled and Raw Rice Mill, 1983 SCC OnLine AP71, referring to Rule 10A CPC, held in para 3 interalia, that ".....when the learned counsel for the defendant is aware of the death of the defendant, then it is expected of him to facilitate the Court to bring his LRs within the statutory period of limitation, to give intimation of the death of the defendant. When such is the position it is the bounden duty of the counsel to give intimation of the LRs or to make an enquiry from the person that gave the information and furnish the same immediately either to the Court or the counsel for plaintiff....."

5. This court, hence, agrees with the submissions made by learned counsel for the appellants that the applications for substitution have been moved within time after the details of proposed LRs were supplied to him.

6. Considering the facts, the present applications are allowed and LRs of deceased respondent Nos.1A and 1B, details whereof are mentioned in para 4 of CM APPL.775/2025 and para 5 of CM APPL.776/2025, respectively are brought on record.

7. Applications stand disposed of."

26. The principal objection raised by Respondent No. 1(E) to the substitution of the Legal Representatives of Respondent Nos. 1(A) and 1(B) is that the applications were filed beyond 90 days from the

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Signing Date:21.11.2026 15:13:24

dates of death and that no separate applications seeking condonation of delay or setting aside of abatement accompanied them. The Appellants, on the other hand, contend that they were first informed of the deaths on 25.11.2024, that the particulars of the Legal Representatives were supplied on 08.12.2024, and that the applications were promptly filed on 07.01.2025, within 90 days of receipt of the particulars.

27. Order XXII of the CPC, *inter alia,* governs the consequences of the death of a party during the pendency of proceedings and the procedure for bringing the Legal Representatives of such party on record. Rule 3 deals with the death of a Plaintiff or Appellant, while Rule 4 deals with the death of a Defendant or Respondent where the right to sue survives. Under the applicable provisions, if no application is made within the prescribed period to bring the legal representatives on record, the proceedings abate insofar as the deceased party is concerned, or, in some cases, the entire proceeding. Such abatement occurs by operation of law and does not depend upon the passing of a specific judicial order.

28. The relevant periods of limitation are prescribed under Articles 120 and 121 of the Schedule to the Limitation Act. Article 120 prescribes a period of 90 days for an application to bring the Legal Representatives of a deceased party on record, commencing from the date of death. Article 121 prescribes a period of 60 days for an application to set aside abatement, commencing from the date on which abatement occurs. Consequently, the period prescribed under Article 120 cannot, as a matter of law, be computed from the date on which the surviving party receives information of the death or obtains the particulars of the Legal Representatives. The date of death remains

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Signing Date:21.11.2026 15:13:24

the statutory starting point. However, the circumstances in which the death became known, the steps taken to obtain the particulars of the Legal Representatives, and the conduct of the parties in communicating such information remain relevant when the Court examines whether the resulting delay and abatement warrant relief.

29. In this context, Order XXII Rule 10A CPC assumes significance. The provision imposes an obligation upon a pleader appearing for a party to inform the Court of the death of that party, thereby facilitating the taking of appropriate procedural steps in the pending proceedings. The scope and object of this provision have been extensively considered by the Hon'ble Supreme Court in ***Binod Pathak v. Shankar Choudhary*** *(supra).* The Hon'ble Supreme Court, *inter alia*, emphasised that Rule 10A was introduced to prevent procedural injustice arising from the failure to communicate the death of a litigant and to ensure that the opposite party is not taken by surprise by a plea that the proceedings have abated. The provision must, therefore, be understood in light of its underlying purpose and not treated as an empty procedural formality.

30. In ***Binod Pathak*** *(supra*), the Hon'ble Supreme Court held that where the obligation contemplated under Order XXII Rule 10A CPC has not been discharged, and there is no cogent material establishing that the opposite party nevertheless had sufficient opportunity to know, and in fact knew, of the death of the deceased party, a plea of abatement raised by a party that failed to comply with the said obligation cannot be entertained. The Court reiterated the principle that no party should be permitted to take advantage of its own lapse to defeat the proceedings. The decision underscores that the question of abatement cannot, in every case, be determined by a mechanical

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reference to the expiry of the statutory period without examining the circumstances in which the death became known and the conduct of the party relying upon abatement.

31. At the same time, the decision does not dispense with Articles 120 and 121 of the Limitation Act or render Order XXII inapplicable. The statutory periods continue to govern substitution and setting aside of abatement. The relevance of ***Binod Pathak*** *(supra)* lies in the assessment of the conduct of the parties and the circumstances in which the requisite procedural steps could reasonably have been taken. The Court must, therefore, examine whether the plea of abatement is being raised in circumstances where the party relying upon it has itself failed to discharge the obligation imposed by law, and whether the opposing party had a fair and effective opportunity to take the necessary steps. The relevant observations as made in ***Binod Pathak*** *(supra)* read as under:

> "**29.** With enforcement of 1976's amendment to the CPC, once a party to the suit dies, a duty is cast upon the lawyer representing such party, to communicate the fact of death to the opposite party in terms of provisions contain in Rule 10A of Order XXII of the CPC. It is nobody's case that there was compliance of this rule in the case at hand by the advocate appearing for the defendants. Unless this primary obligation is discharged and it is established with cogent evidence that the opposite party had sufficient opportunity to know and, had, in fact, knowledge of the death of the defendant, the plea of abatement of the suit at the instance of party having failed to comply with the obligation mentioned under Rule 10A of Order XXII of the CPC cannot be entertained. Nobody can be allowed to reap the benefit of his own lapse and to non-suit the plaintiff.
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> *****
>
> **32.** Rule 10A is intended to avoid delay in making an application for bringing legal representatives of the deceased party on record. It seeks to mitigate the hardship arising from the fact that a party to a suit may not come to know about the death of the other side during the pendency of the proceedings. In such a situation, it would be appropriate to ask the advocate of the party to give intimation of

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Signing Date:21.11.2026 15:13:24

the death of the party represented by him so as to enable the other side to take appropriate steps.

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38. Order III, Rule 4 prescribes the manner of appointment of a pleader and also the limit upto which such appointment remains in force. Every appointment of a pleader will be continued *inter alia* until the client or the pleader dies. As a general rule, therefore, on the death of the client his contract with the pleader comes to an end. So also, his authority to act on behalf of his client expires.

39. Rule 10A, as inserted by the Amendment Act, 1976 carves out an exception to the above general rule and casts a duty upon the advocate appearing for the party to intimate the court about the death of his client. For this purpose, a deeming fiction has been created that the contract between the (deceased) client and the pleader subsists to that limited extent. [See:***Gangadhar* v. *Raj Kumar*, (1984) 1 SCC 121**]

40. Rule 10A of Order XXII is salutary in nature. It has been introduced to mitigate hardship arising from the fact that a suit, appeal or other proceeding may take long time and a party to a suit, appeal or other proceeding may die and the other party may not be aware of such a situation. Rule 10A seeks to do justice over technicalities by requiring an advocate appearing for the party to intimate the court about the death of his client and provides an opportunity to the other side to take necessary steps to bring heirs and legal representatives of the deceased party on record. Rule 10A is thus not an empty formality. Preeminent object of the rule is to do full and complete justice.

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45. The genesis of the provision of Rule 10A of the Order XXII lies in the doctrine of 'clean hands'. The doctrine of 'clean hands' originates from the Roman Law, and finds expression in two latin maxims being **(i)***ex injuria ius non oritur* and **(ii)***nullus commodum capere potest de injuria sua propia*, which mean "from wrong, no right arises" and "no one can take advantage of their own wrong", respectively. [See:*Schwebel, Stephen M. "Clean Hands, Principle"* ***Eds., Rüdiger Wolfrum, Oxford University Press, 2009]***.

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57. On the basis of the aforesaid, we are of the considered view that the underlying ethos of Order XXII, Rule 10A is not based on the maxim of '*ex injuria ius non oritur*'. A 'right' accrues in the eyes of law through two principal channels : *first* through the force of any law or statute itself, and *secondly*, through acts enabled by the law that possess the normative force to create enforceable claims backed by the operation of law or facilitated by conventional legal norms such as a gift, will, consent, contract etc., acts that have the capacity to create legal rights. Any legal norm, must possess normativity and generality, which together must have such an effect that the norm ought to become valid in law or through the

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Signing Date:21.11.2026 15:13:24

law, in order for it to give birth to a right. In other words, only those acts which attain legal validity inherently within the legal system or through its mechanism can be said to give rise to a 'right'.

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59. The question of allowing abatement of suit is one of discretion and therefore, an advantage. Under Rule 10A of Order XXII, the duty of a pleader to apprise the court as well as the other parties to the suit or appeal of the death of his client is a duty of candour and propriety as a responsible officer of the court. The failure of a party to perform the duty under Rule 10A constitutes a wrongful act and such party must not be allowed to avail the benefit arising therefrom in the form of abatement of suit.

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60. Rule 10A of Order XXII, as inserted by the Amendment Act, 1976 imposes an obligation on the pleader appearing for the party to intimate death of his client to the court. But there is difference of opinion as to whether the duty imposed on the pleader is confined to factum of death of a party or also to furnish names and particulars of legal representatives.

61. According to one view, there is no obligation on the pleader appearing on behalf of the deceased party to furnish or supply list of legal representatives of the deceased.

62. According to the other view, however, the pleader has not only to inform the court as to death of the party but he must also furnish particulars of legal representatives.

63. However, we are of the view that providing merely an information with regard to the fact of death is not sufficient compliance of the Rule 10A of the CPC. unless and until the counsel furnishes the information with regard to the details of the persons on whom and against whom the right to sue survives and the information under Rule 10A of the CPC. and the object behind it would remain incomplete as the parties would still be labouring to inquire who are the legal representatives and find out as to upon whom and against whom the right to sue survives."

(emphasis supplied)

32. The Hon'ble Supreme Court has also considered the relationship between an application for substitution and the consequential relief of setting aside abatement in ***Mithailal Dalsangar Singh*** ***(****supra)* and ***Om Prakash Gupta alias Lalloowa*** ***(****supra)*. These decisions recognise that the absence of a separately worded prayer for setting aside abatement does not, by itself,

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Signing Date:21.11.2026 15:13:24

necessarily defeat an application for substitution. In an appropriate case, the prayer for substitution may be construed as incorporating the consequential relief of setting aside abatement. However, the grant of such relief remains dependent upon the facts and circumstances of the case and the sufficiency of the explanation offered for the delay. The distinction is between the form in which the consequential relief is sought and the substantive requirement that the Court be satisfied that the delay and abatement ought to be excused. The relevant observations as made in ***Om Prakash Gupta alias Lalloowa*** *(supra)* read as under:

> "**11.** Rule 1 of Order XXII, CPC provides that when a party to a suit passes away, the suit will not abate if the right to sue survives. In instances where the right to sue does survive, the procedure for bringing on record the legal representative(s) of the plaintiff/appellant and the defendant/respondent are provided in Rules 3 and 4, respectively, of Order XXII. The suit/appeal automatically abates when an application to substitute the legal representative(s) of the deceased party is not filed within the prescribed limitation period of 90 days from the date of death, as stipulated by Article 120 of the Limitation Act, 1963. It could well be so that death of a defendant/respondent is not made known to the plaintiff/appellant within 90 days, being the period of limitation. Does it mean that the suit or appeal will not abate? The answer in view of the scheme of Order XXII cannot be in the negative. In the event the plaintiff/appellant derives knowledge of death immediately after the suit/appeal has abated, the remedy available is to file an application seeking setting aside of the abatement, the limitation wherefor is stipulated in Article 121 and which allows a period of 60 days. Therefore, between the 91st and the 150th day after the death, one has to file an application for setting aside the abatement. On the 151st day, this remedy becomes time-barred; consequently, any application seeking to set aside the abatement must then be accompanied by a request contained in an application for condonation of delay under Section 5 of the Limitation Act in filing the application for setting aside the abatement. Thus, the total time-frame for filing an application for substitution and for setting aside abatement, as outlined in Articles 120 and 121 of the Limitation Act, is 150 (90 + 60) days. The question of condonation of delay, through an application under Section 5 of the Limitation Act, arises only after this period and not on the 91st day when the suit/appeal abates. From our limited

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Signing Date:21.11.2026 15:13:24

experience on the bench of this Court, we have found it somewhat of a frequent occurrence that after abatement of the suit and after the 150th day of death, an application is filed for condonation of delay in filing the application for substitution but not an application seeking condonation of delay in filing the application for setting aside the abatement. The proper sequence to be followed, therefore, is an application for substitution within 90 days of death and if not filed, to file an application for setting aside the abatement within 60 days and if that too is not filed, to file the requisite applications for substitution and setting aside the abatement with an accompanying application for condonation of delay in filing the latter application, i.e., the application for setting aside the abatement. Once the court is satisfied that sufficient cause prevented the plaintiff/appellant from applying for setting aside the abatement within the period of limitation and orders accordingly, comes the question of setting the abatement. That happens as a matter of course and following the order for substitution of the deceased defendant/respondent, the suit/appeal regains its earlier position and would proceed for a trial/hearing on merits. Be that as it may.

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17. According to Mr. Basant, the application filed by the heirs of Satish Chandra was an application intimating the death of Satish Chandra under Order XXII Rule 10-A, CPC and it was not an application under Rule 4 thereof; thus, there being no valid and proper application for substitution, the appeal was rightly held to have abated.

18. We find no force in the argument advanced by Mr. Basant. The application filed by the heirs of Satish Chandra was registered as a substitution application and the prayer was also for deletion of the name of Satish Chandra and substitution of his three sons in his place. In view thereof and having regard to the law laid down in *Ram Charan* (supra), we hold that an application having been filed by the heirs of Satish Chandra, the heirs of Om Prakash were not legally obliged to apply separately for substitution.

19. In our opinion, the law not having expressly mandated that an application for substitution has to be filed by the plaintiff/appellant upon receiving intimation of death, requiring a formal application from the plaintiff only will serve no tangible purpose. A justice-oriented approach has to be followed in interpreting the provisions of the CPC is the well settled law. Reference may usefully be made to the decision in ***Chinnammal* v. *P. Arumugham***[33], where it was held:

> "17. It is well to remember that the Code of Civil Procedure is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishments and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. It is in our opinion,

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not unreasonable to demand restitution from a person who has purchased the property in court auction being aware of

the pending appeal against the decree."

(emphasis supplied)

*****

22. There is another equally important aspect, which merits our attention. The second appeal was restored by the High Court *vide* order dated 25th May, 2018. This order, restoring the second appeal, was recalled *vide* order dated 11th January 2019. The reason given was that, in the absence of an application praying for setting aside the abatement, the second appeal could not have been ordered to be restored.

23. We find it difficult to agree with such reasoning. When an application praying for substitution had been made, then, even assuming that it does not have an explicit prayer for setting aside the abatement, such prayer could be read as inherent in the prayer for substitution in the interest of justice. We draw inspiration for such a conclusion, having read the decision in ***Mithailal Dalsangar Singh* v. *Annabai Devram Kini***[35]. This Court reiterated the need for a justice-oriented approach in such matters. *Inter alia*, it was held that prayer to bring on record heir(s)/legal representative(s) can also be construed as a prayer for setting aside the abatement. The relevant passage reads as under:

"8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting

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Signing Date:21.11.2026 15:13:24

aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of 'sufficient cause' within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction.

10. In the present case, … such an approach adopted by the Division Bench verges on too fine a technicality and results in injustice being done. There was no order in writing passed by the court dismissing the entire suit as having abated. The suit has been treated by the Division Bench to have abated in its entirety by operation of law. For a period of ninety days from the date of death of any party the suit remains in a state of suspended animation. And then it abates. The converse would also logically follow. Once the prayer made by the legal representatives of the deceased plaintiff for setting aside the abatement as regards the deceased plaintiff was allowed, and the legal representatives of the deceased plaintiff came on record, the constitution of the suit was rendered good; it revived and the abatement of the suit would be deemed to have been set aside in its entirety even though there was no specific prayer made and no specific order of the court passed in that behalf."

(emphasis supplied)

…"

(emphasis supplied)

33. In the present case, the Impugned Order records that information regarding the deaths of Respondent Nos. 1(A) and 1(B) was furnished on 25.11.2024 and that the particulars of their Legal Representatives were supplied on 08.12.2024. The applications for substitution were thereafter filed on 07.01.2025. The Appellants'

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Signing Date:21.11.2026 15:13:24

explanation is, therefore, that they took steps for substitution promptly after the particulars necessary to identify the Legal Representatives became available to them. The learned Registrar considered this sequence of events and accepted the explanation furnished by the Appellants.

34. Respondent No. 1(E) before this Court does not dispute the dates on which the deaths and the particulars of the Legal Representatives were communicated, or the date on which the substitution applications were filed. Its objections are procedural; *first*, that no application for condonation of delay was filed; and *second*, that no separate application seeking to set aside abatement accompanied the applications for substitution.

35. In this considered opinion of this Court, the objection that the Appellants were required to file a separate application to set aside abatement is not sustainable. As held by the Hon'ble Supreme Court in ***Mithailal Dalsangar Singh*** (*supra*) and ***Om Prakash Gupta alias Lalloowa*** (*supra*), a prayer to bring the Legal Representatives on record may, in an appropriate case, be construed as including the consequential prayer to set aside abatement. The absence of a separately worded prayer is therefore not, by itself, fatal in the present case, too.

36. As to the absence of a separate application for condonation of delay, the Hon'ble Supreme Court held in ***Sesh Nath Singh*** (*supra*) that Section 5 of the Limitation Act does not invariably require a formal written application. Although filing such an application is the usual practice and helps the Court assess the reasons for the delay, the Court may exercise its discretion to condone delay without one. Condonation is not automatic, and the applicant must establish

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By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:13:24

sufficient cause, and the Court must be satisfied that the explanation justifies the delay. If the material on record is inadequate, the Court may require the applicant to file an application or affidavit explaining it. The relevant observations of the Hon'ble Supreme Court as in ***Sesh Nath Singh*** (*supra*) are as follows:

> "**58.** In ***Ramlal, Motilal & Chhotelal* v. *Rewa Coalfields Ltd.*, AIR 1962 SC 361**, this Court affirmed the view taken by the Madras High Court in ***Krishna* v. *Chathappan*, 1889 SCC OnLine Mad 1**, and held that Section 5 of the Limitation Act gives the courts a discretion, which is to be exercised in the way in which judicial power and discretion ought to be exercised, upon principles which are well understood. The expression "sufficient cause" should be construed liberally to advance substantial justice, as held by this Court, inter alia, in ***Shakuntla Devi Jain* v. *Kuntal Kumari*, AIR 1969 SC 575** and in ***State of W.B.* v. *Howrah Municipality*, (1972) 1 SCC 366**.
>
> **59.** The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute "sufficient cause" or not would be dependent upon facts of each case. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished by the appellant applicant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.
>
> **60.** It is true that a valuable right may accrue to the other party by the law of limitation, which should not lightly be defeated by condoning delay in a routine manner. At the same time, when stakes are high, the explanation should not be rejected by taking a pedantic and hypertechnical view of the matter, causing thereby irreparable loss and injury to the party against whom the lis terminates. The courts are required to strike a balance between the legitimate rights and interests of the respective parties.
>
> **61.** Section 5 of the Limitation Act, 1963 does not speak of any application. The section enables the court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the court or tribunal to weigh the sufficiency of the cause for the inability of the appellant applicant to approach the court/tribunal within the time prescribed by limitation, there is no bar to exercise by the

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By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:13:24

court/tribunal of its discretion to condone delay, in the absence of a formal application.

62. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the court is satisfied that the appellant applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application."

(emphasis supplied)

37. In the present case, some relevant dates are necessary to be taken note of. For instance, the RFA was filed in 2014 and admitted on 26.02.2016. It was next taken up on 18.09.2023, following an application by the Appellants for an early hearing. The matter was thereafter listed on four occasions without any disclosure concerning the deaths of Respondent Nos. 1(A) and 1(B) by any of the Respondents. The deaths were disclosed only on 25.11.2024 as recorded in the Order of the said date. The Appellants received the particulars of the Legal Representatives on 08.12.2024 and filed the substitution applications on 07.01.2025, approximately one month later.

38. In these circumstances, the record supports the Appellants' explanation that they acted within a reasonable time after receiving the particulars needed to identify the Legal Representatives. Before the disclosure on 25.11.2024, the Appellants had not been provided with

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By:HARVINDER KAUR BHATIA
Signing Date:21.11.2026 15:13:24

the relevant information concerning the deaths, even though there is a specific mandate of law in this regard.

39. Further, the appeal had also not been listed for a substantial period before it was taken up in September 2023. The delay must therefore be assessed in light of when the deaths and the particulars of the Legal Representatives were communicated, as well as the Appellants' conduct after receiving that information. Applying the principles in ***Binod Pathak*** (*supra*), ***Mithailal Dalsangar Singh*** (*supra*) and ***Om Prakash Gupta alias Lalloowa*** (*supra*), a justice-oriented approach is warranted. On the circumstances recorded in the Impugned Order, the absence of a separate application for condonation of delay does not, by itself, defeat the substitution applications.

40. Having considered the parties' submissions and the material recorded in the Impugned Order, this Court finds no sufficient ground to interfere with the learned Registrar's decision allowing CM APPL. Nos. 775/2025 and 776/2025. The applications for substitution may, in an appropriate case, be construed as including the consequential prayer to set aside abatement. The Court must also consider when the deaths and the particulars of the Legal Representatives were communicated, rather than determine the plea of abatement solely by reference to the dates of death. Finally, the absence of a formal application for condonation of delay is not invariably fatal, provided the record establishes sufficient cause. In the circumstances of this case, the decision allowing the applications warrants no interference.

41. Accordingly, the challenge to the Impugned Order, insofar as it allows ***CM APPL. Nos. 775/2025 and 776/2025*** concerning the Legal Representatives of Respondent Nos. 1(A) and 1(B), is rejected.

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Signing Date:21.11.2026 15:13:24

B. <u>CM APPL. 41635/2025 (for bringing on record the LRs ofR1(G)and CM APPL. 41636/2025 (delay of105 days)</u>

42. At this stage, it is apposite to reproduce the analysis and findings of the learned Registrar in the Impugned Order in respect of these two applications, which read as follows:

> *"<u>CM APPL. 41635/2025 (for bringing on record the LRs of R1(G)- Smt. Premwati and CM APPL. 41636/2025 (delay of 105 days)</u>*
>
> **8.** Learned counsel for the appellants submit that death of respondent No.1G occurred on 27.12.2024, as per death certificate. Learned counsel further submit that on 24.02.2025 none was present on behalf of the appellants and learned counsel for respondent No1(D to J) made statement in the Court that details of LRs of deceased respondent No.1G have been supplied to learned counsel for the appellant. However, fact of the matter is that no such details were supplied.
>
> **9.** It is further submitted that details of LRs of respondent No.1G were supplied on 10.07.2025 through WhatsApp no.8390234533 and the present application was filed on 13.07.2025, just after two days of receiving of the details. Learned counsel for appellants submit that the application has been filed within the limitation period from the date of receiving the details of proposed LRs of deceased respondent No.1G. Learned counsel for appellant further submits that as a precaution, he has moved an application (CM 41636/2025 u/S 5 of Limitation Act) for condonation of delay.
>
> **10.** In view of the aforesaid, this court agrees with the submissions made by learned counsel for the appellants. Consequently, the present applications are allowed and LRs of deceased respondent No.1G, details whereof having been mentioned in para 3 of CM 41635/2025, are brought on record.
>
> **11.** Amended memo of parties be filed within four weeks."

43. The position concerning Respondent No. 1(G) stands on a slightly different footing. She passed away on 27.12.2024. CM APPL. No. 41635/2025, seeking substitution of her Legal Representatives, was filed on 13.07.2025, accompanied by CM APPL. No. 41636/2025, seeking condonation of delay in filing the substitution application.

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Signing Date:21.11.2026 15:13:24

44. The principal objection raised by Respondent No. 1(E) to the aforesaid applications is premised on the Order dated 24.02.2025, which records that the particulars of the Legal Representatives of Respondent No. 1(G) had already been furnished to the learned counsel for the Appellants. It is contended that the explanation subsequently furnished by the Appellants, to the effect that the said particulars were received only on 10.07.2025 through WhatsApp, is contrary to the judicial record. Respondent No. 1(E) would further dispute the WhatsApp communication relied upon by the Appellants and contend that the explanation furnished in support of the application seeking condonation of delay is, therefore, untenable.

45. On the other hand, the Appellants maintain that the particulars of the Legal Representatives of Respondent No. 1(G) were communicated to their counsel only on 10.07.2025 through WhatsApp and that CM APPL. No. 41635/2025 was filed on 13.07.2025, immediately upon receipt thereof. In support of this explanation, learned counsel would draw the attention of this Court to the personal affidavit furnished by one of the learned counsel appearing for the Appellants, affirming on oath the date and manner in which the requisite particulars were received. It is, thus, contended that the delay stands satisfactorily explained and that the learned Registrar committed no error in allowing the applications.

46. At this juncture, it would be apposite to note that the legal principles governing the substitution of Legal Representatives of a deceased party and the condonation of delay in filing an application seeking such substitution have already been elaborately dealt with in the foregoing portion of this judgment. Accordingly, for the sake of

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Signing Date:21.11.2026 15:13:24

brevity and to avoid repetition, this Court does not deem it necessary to reiterate the same herein.

47. In the present case, the Appellants have specifically asserted that the particulars of the Legal Representatives of Respondent No. 1(G) were received only on 10.07.2025 through WhatsApp and that the substitution application was filed on 13.07.2025. Significantly, this assertion is supported by a sworn affidavit furnished by one of the learned counsel appearing for the Appellants. The explanation, therefore, is not founded merely upon a bald assertion in the application seeking condonation of delay, but is supported by an affidavit on oath affirming the circumstances in which the requisite particulars were received.

48. This Court also takes note of the objection founded upon the Order dated 24.02.2025, which records that the particulars of the Legal Representatives had been supplied to the learned counsel for the Appellants. However, Respondent No. 1(E) has not placed any independent material on record to demonstrate that the particulars were actually received by the Appellants or their counsel on the date or at the point of time suggested by him. The mere recording of the aforesaid fact in the Order dated 24.02.2025, in the absence of any material establishing actual communication or receipt of the particulars by the Appellants' counsel, would not, in the facts of the present case, be sufficient to displace the specific assertion supported by a sworn affidavit.

49. It is also relevant that the Appellants have demonstrated promptitude in taking steps for substitution immediately upon receipt of the particulars. The substitution application came to be filed within three days of the date on which the particulars are stated to have been

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Signing Date:21.11.2026 15:13:24

received. This subsequent conduct lends credence to the explanation furnished by the Appellants and indicates that there was no deliberate inaction on their part once the requisite particulars became available.

50. In this regard, this Court is guided by the settled principle that the expression 'sufficient cause' under Section 5 of the Limitation Act is required to be construed in a manner that advances substantial justice, while keeping in view the facts and circumstances of each case. The exercise of discretion in condoning delay must, therefore, be informed by the *bona fides* of the explanation furnished, the conduct of the party seeking condonation and the material available on record. In the present case, the sworn affidavit filed by the Appellants' counsel, coupled with the prompt filing of the substitution application and the absence of any material produced by Respondent No. 1(E) to substantiate his contrary assertion, persuades this Court to accept the explanation furnished by the Appellants.

51. In view of the foregoing discussion, this Court is of the considered opinion that the explanation furnished by the Appellants constitutes sufficient cause for condonation of delay in filing CM APPL. No. 41635/2025. The learned Registrar has rightly accepted the explanation furnished by the Appellants, particularly in view of the sworn affidavit placed on record and the absence of any cogent material to rebut the same. Consequently, this Court finds no infirmity in the Impugned Order dated 20.07.2026, insofar as it allows CM APPL. Nos. 41635/2025 and 41636/2025, warranting interference in the present Chamber Appeal.

52. Accordingly, the challenge to the Impugned Order insofar as it allows ***CM APPL. Nos. 41635/2025 and 41636/2025***, concerning the Legal Representatives of Respondent No. 1(G), is rejected.

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Signing Date:21.11.2026 15:13:24

53. This Court now briefly takes note of certain ancillary issues arising in the present Chamber Appeal.

C. Locus of Respondent No. 1(E)to file the Chamber Appeal

54. The Appellants before this Court have questioned the Respondent No. 1(E)'s *locus* to file the present Chamber Appeal. Since this Court has found the Impugned Order to be sustainable, it may not be necessary to decide that objection. In any event, the objection is *ex facie* without merit.

55. Rule 5 of Chapter II of the Delhi High Court (Original Side) Rules, 2018 provides that "*any person aggrieved by any order made by the Registrar under Rule 3 of this Chapter*" may appeal against that order to the Judge in Chambers within fifteen days.

56. The learned Registrar allowed the substitution of the Legal Representatives of three Respondents. Respondent No. 1(E) was aggrieved by that decision because, had the substitution not been allowed, his plea that the RFA had abated could have been considered on its merits. He therefore had a direct interest in challenging the learned Registrar's order and qualifies as an aggrieved person for the purposes of Rule 5. The objection to his *locus* is accordingly rejected.

D. Prayer for a declaration that the RFA had abated

57. This Court has upheld the Impugned Order and found that the substitution of the respondents' Legal Representatives was in accordance with law. It is therefore not required to consider the Chamber Respondent No. 1(E)'s specific prayer for a declaration that the RFA had abated.

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CONCLUSION:

58. In view of the foregoing discussion, this Court finds no ground to interfere with the Impugned Order insofar as it allows ***CM APPL. Nos. 775/2025 and 776/2025***, concerning the Legal Representatives of Respondent Nos. 1(A) and 1(B). Similarly, no interference is warranted with the Impugned Order insofar as it allows ***CM APPL. Nos. 41635/2025 and 41636/2025***, concerning the substitution of Legal Representatives of Respondent No. 1(G).

59. Accordingly, the present Chamber Appeal is dismissed.

60. The Chamber Appeal is disposed of in the above terms. Any pending applications in the Chamber Appeal also stand disposed of.

RFA 515/2014

61. List on 17.03.2027 before Roster Bench for further consideration.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 19, 2026/va

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