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

Reserved on: 13.05.2025
Pronounced on: 28.07.2025

\+ **FAO(OS) 58/2025 & CM APPLs. 28909-11/2025**

LATE J.P. GUPTA
(THROUGH HIS LR.) SUNIL GUPTA ....Appellant
Through: Mr. Shikhar Mittal & Mr. Jatin Kapur, Advs.

versus

BOSCH LIMITED & ORS. .....Respondents
Through: *Nemo.*

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

RENU BHATNAGAR, J.

1. This appeal has been filed by the appellant, challenging the Order dated 08.05.2024 passed by the learned Single Judge of this Court in I.A. 10423/2023 in CS(OS) 135/2006, titled ***'Bosch limited v. M/S Guptajee Engineers & Ors.'*** (hereinafter referred to as the 'Impugned Order'), whereby the learned Single Judge has been pleased to set aside the abatement of Suit *qua* the appellant herein in terms of Order XXII Rule 9 (2) of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC').

Brief Facts

2. The respondent company had filed the abovesaid Suit for recovery against the Late Shri J.P. Gupta/defendant no. 2 as a proprietor of M/s Guptajee Engineers (defendant no. 1), praying for the following reliefs:

> *"(a) Pass a decree in favour of the Plaintiff Company and against the Defendants for a sum of Rs. 1,03,78,709.76 (Rupees One Crore Three Lacs Seventy Eight Thousand Seven Hundred and Nine and Paise Seventy Six Only) along with interest @ 19% from, December 1, 2005, till realisation;*
> *(b) Award costs of the present suit to the Plaintiff Company."*

3. In the plaint, the respondent no. 1- company has asserted that it is engaged in the business of manufacturing, marketing and sale of spark plugs, fuel injection equipment and other auto parts/ accessories. The respondent no. 1 claims that the respondent company supplied several consignments of equipment to the defendant no.1/partnership firm in the original Suit, and after dispatch, raised invoices for the same.

4. It is the case of the respondent no. 1 that since the defendants failed to make payments against the invoices raised by the respondent company, on respective due dates, the respondent company issued a notice dated 04.04.2005 calling upon the defendants therein to pay the said amount within 15 days from the date of receipt of the said notice.

5. Thereafter, since the defendants therein failed to make the said payments, the plaintiff/ respondent no. 1 herein filed the above Suit for recovery of Rs. One Crore Three Lacs Seventy-Eight Thousand

Seven Hundred and Nine Rupees and Seventy-Six Paisa only.

6. The Late Shri J.P. Gupta filed his Written Statement in the Suit, on or around 30.07.2012 *inter alia* stating that the Partnership Firm, which was impleaded as defendant no.1, had been dissolved on 31.03.2006, that is, before the institution of the Suit and the business of the Partnership Firm was taken over by the him as the sole proprietor. Consequently, the name of defendant no. 3/Shri M.K. Gupta, erstwhile partner of the Partnership Firm was deleted. Late Shri J.P. Gupta also set up a claim for *set-off* against the plaintiff/respondent no.1.

7. The issues were framed in the above-mentioned Suit on 17.03.2016, however, during the course of the proceedings of the Suit, Late Shri J.P. Gupta unfortunately passed away on 16.02.2021.

8. It is asserted by the appellant that the said Suit abated *qua* the Late Shri J.P. Gupta/defendant no. 2.

9. It is the case of the appellant that the plaintiff/respondent no.1, on 27.09.2022 filed an application under Order XXII Rule 4 CPC seeking substitution/impleadment of LR's of Late Shri J.P. Gupta, *albeit*, without an application under Order XXII Rule 9(2) seeking setting aside of the abatement of the Suit *qua* Late Shri J.P. Gupta. It was only on 20.05.2023, that the plaintiff/respondent no.1 filed the application seeking setting aside of abatement of Suit *qua* Late Shri J.P. Gupta, along with an application seeking condonation of delay in filing the abovesaid application.

10. The plaintiff/respondent no.1 contended that the exact date of death of Late Shri J.P. Gupta was not known to the respondent till

02.05.2023. Thereafter, the respondent made every endeavour to secure the details of the LRs of the deceased defendant no. 2 therein, and filed the above application.

11. The learned Single Judge, *vide* the Impugned Order, allowed the said applications filed by the respondent/plaintiff by holding as under:

> *"**12.** From the averments made in the present application, it is evident that the delay initially occurred due to the COVID-19 Pandemic. Thereafter, the plaintiff has filed I.A. 16250/2022 under Order XXII Rule 4 CPC on 27.09.2022 for bringing the legal heirs of the deceased defendant No. 2 on record. Due to inadvertence, the Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 for setting aside the abatement of suit qua defendant No. 2, has been delayed.*
> ***13.** It is evident that the application for substitution of legal heirs had been filed diligently and there is pure inadvertence in not filing the appropriate Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 for setting aside the abatement of suit qua defendant No. 2. Since the substitution of the legal heir defendant No. 2 can be allowed only after the abatement is set aside.*
> ***14.** It is also pertinent to observe that the procedural laws cannot be applied against the litigant to deny him the substantive rights. In the interest of justice and for the reasons stated above, the application is allowed and the delay in filing the Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 is hereby allowed*
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> ***xxxx***
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> *24. The plea on behalf of the legal heir of defendant No. 2/J.P. Gupta that he cannot be impleaded as there is no right to sue against him, is absolutely fallacious. A proprietorship is only a business name which is run by a*

proprietor. In case of the death of the proprietor, the right to sue continues against the legal representatives of the proprietor as the real party that is being sued, is the proprietor and not the business as held by the Apex Court in Raghu Lakshminarayanan vs Fine Tubes, (2007) 5 SCC 103.

25. Therefore, it cannot be said that there is no cause of action survives in the present Suit.

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27. In view of the circumstances as discussed above, the application is allowed and the abatement is hereby set aside."

12. Aggrieved of the impugned order, the appellant has preferred the present appeal.

Submissions of the learned counsel for the appellant

13. The learned counsel for the appellant submits that the application seeking setting aside of the abatement of the Suit *qua* Late Shri J.P. Gupta is grossly time barred, being filed beyond the prescribed sixty days period from the date of deemed abatement of the Suit, that is, 29.05.2022. He further submits that the respondent no.1 did not provide any sufficient cause for seeking condonation of delay of 120 days in filing the application seeking setting aside of abatement of the Suit *qua* Late Shri J.P. Gupta, and hence, an important right had already crystallized and matured in favour of the appellant.

14. He further submits that no right to sue exists in favour of the respondent as against the appellant herein/ LRs of Late Shri J.P. Gupta, as the defendant no. 1 therein, being a partnership firm, ceased to exist on the death of the partner, as prescribed by the Section 42(c) of the Indian partnership Act, 1932 (in short, 'Partnership Act').

15. He submits that the appellant/LR of Late Shri J.P. Gupta did not inherit any estate/property from the deceased Late Shri J.P. Gupta and as such no right to sue survives *qua* the appellant.

16. He submits that the knowledge of death of Late Shri J.P. Gupta was even recorded in /the Order dated 28.09.2021, passed in the Suit. He further submits that the lackadaisical approach of the respondents no. 1 further precludes them from any leniency from this Court

17. The learned counsel for the appellant submits that the Judgment of the Apex Court in ***Raghu Laskshminarayan v. Fine Tubes,*** (2007) 5 SCC 103 , relied upon by the learned Single Judge, is not applicable to the facts of the present case as in the present case, even if it is believed that the nature of M/s Guptajee Engineers changed from being a partnership firm to a sole proprietorship of Late Sh. J.P. Gupta, the alleged dues incurred, if any, were at the time of existence of the partnership firm and in the course of its business dealings of the Respondent No. 1 Company with said partnership firm only, and not subsequently.

18. The learned counsel for the appellant further places reliance on Judgements of the Apex Court in ***S.P. Misra & Ors. v. Mohd. Laiquddin Khan & Anr.,*** (2019) 10 SCC 329, and ***Annapurna B. Uppin & Ors. v. Malsiddappa & Anr.***, (2024) 8 SCC 700, submitting that the liability which arose on account of alleged non-payment of invoices raised upon the partnership firm, could in no manner become the liability of a legal heir of one of the partners of the firm, even after the dissolution of the partnership firm

Analysis and findings

19. We have considered the submissions made by the learned counsel for the appellant.

20. The principles to guide courts while considering applications for setting aside of abatement and application for condonation of delay in filing the said applications are laid down by the Apex Court in ***Perumon Bhagvathy Devaswom v. Bhargavi Amma & Ors.***, (2008) 8 SCC 321, and the same is reproduced as under:

> *"**13.** The principles applicable in considering applications for setting aside abatement may thus be summarised 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 the 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 bona fides, deliberate inaction or negligence on the part of the appellant.*
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> *(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.*
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> *(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."

21. Recently, the Supreme Court in ***Binod Pathak & Ors. v. Shankar Choudhary & Ors.***, 2025 SCC OnLine SC 1411, while reiterating the principles laid down in the Judgment in ***Perumon Bhagvathy Devaswom*** (supra), has held as under:

*"**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.*

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66. *The legislative intention of casting a burden on the advocate of a party to give intimation of the death of the party represented by him and for this limited purpose to introduce a deeming fiction of the contract being kept subsisting between the advocate and the deceased party was that the other party may not be taken unaware at the time of hearing of the appeal by springing surprise on it that the respondent is dead and appeal has abated. In order to avoid procedural justice scoring a march over substantial justice the Rule 10A was introduced by the Code of Civil Procedure (Amendment) Act of 1976 which came into force on February 1st, 1977. Unfortunately, the High Court took no notice of the wholesome provision and fell back on the earlier legal position which automatically stands modified by the new provision and*

reached an unsustainable conclusion."

22. Rule 1 of Order XXII of the CPC lays down that a suit shall not abate on the death of a party if the right to sue survives. Where such right survives, the procedure for substitution of legal representatives is prescribed in Rule 3 (in the case of the plaintiff/appellant) and Rule 4 (in the case of the defendant/respondent) of Order XXII.

23. When a party dies, an application for bringing the legal representative(s) on record must be filed within 90 days from the date of death, as stipulated under Article 120 of the Schedule to the Limitation Act, 1963 (in short, 'Limitation Act'). Failure to do so results in automatic abatement of the suit or appeal. However, it may often happen that the plaintiff/appellant is not made aware of the death of the defendant/respondent within the prescribed 90-day period. The scheme of Order XXII of the CPC makes it clear that such lack of knowledge does not prevent abatement. In such cases, upon acquiring knowledge of the death, after the abatement has already occurred, the remedy available to the plaintiff/appellant is to file an application for setting aside the abatement. As per Article 121 of the Schedule to the Limitation Act, such an application must be filed within 60 days from the date of abatement.

24. If there is any delay in moving such application(s), an application seeking condonation of delay shall be moved along with such application(s). Once the Court is satisfied that sufficient cause has been shown for the delay in filing the application to set aside the abatement, and the delay is condoned, the abatement is set aside

accordingly. Thereafter, upon substitution of the deceased party being allowed, the suit or appeal stands revived and shall proceed to be heard and decided on its merits.

25. In the present case, as noted hereinabove, the defendant no. 2, namely Late Mr. J.P. Gupta unfortunately passed away on 16.02.2021, however, keeping in view the extension of limitation by the Supreme Court in ***re Cognizance for Extension of Limitation***, *(2022) 3 SCC 117*, whereby, the Supreme Court had held that where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, like in the present case, the parties shall have a limitation period of 90 days from 01.03.2022, the respondent no.1/plaintiff ought to have moved an appropriate application seeking substitution/impleadment of the legal representative(s) of the defendant no. 2, on or before 29.05.2022.

26. Since the respondent no.1/plaintiff failed to move an appropriate application seeking substitution/impleadment of the legal representative(s) of the defendant no. 2, the said Suit, in terms of Order XXII Rule 3 of the CPC, was deemed to be abated *qua* the defendant no. 2 therein on 29.05.2022.

27. Thereafter, the appellant herein ought to have moved an appropriate application under Order XXII Rule 9(2) of the CPC, seeking setting aside of the abatement of the Suit *qua* the defendant no. 2, within 60 days thereafter, however, the respondent no.1/plaintiff failed to move the said application. It was only on 27.09.2022 that the respondent no.1/plaintiff filed an application under Order XXII Rule 4 CPC seeking substitution/impleadment of LR's of defendant no. 2,

albeit, without an application under Order XXII Rule 9(2) seeking setting aside of the abatement of the Suit *qua* the appellant/defendant no. 2. After realising the said procedural lapse, the respondent no.1/plaintiff moved an application, being I.A. 10423/2023, seeking setting aside of the abatement of the Suit, alongwith an application seeking condonation of delay in filing the said application being I.A. 10424/2023. The learned Single Judge, *vide* the Impugned Order, allowed both these application, thereby, setting aside the the abatement of the Suit *qua* the appellant/defendant no. 2.

28. In the present case, while allowing the IA 10424/2023 filed by the respondent no.1/plaintiff seeking condonation of delay in filing the application under Order XXII Rule 9(2) of the CPC seeking setting aside of abatement *qua* deceased defendant no. 2/Late Shri J.P. Gupta, learned Single Judge had taken note of the fact that delay initially occurred due to Covid-19 pandemic and there is pure inadvertence of the respondent no.1/plaintiff in not filing an application under Order XXII Rule 9(2) of the CPC for setting aside the abatement of the original Suit *qua* defendant no. 2. It was further observed by the learned Single Judge in the Impugned Order that substitution of Legal representatives of the defendant no. 2 /Late Mr. J.P. Gupta can be allowed only after the abatement *qua* the defendant no. 2 is set aside, and that the procedural laws cannot be applied against the litigant to deny him the substantive rights.

29. We find no infirmity in the aforementioned observation passed by the learned Single Judge in that regard. In ***Mithailal Dalsangar Singh v. Annabai Devram Kini,*** (2003) 10 SCC 691, the Supreme

Court, reiterated the need for a justice-oriented approach in such matters. 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 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.*
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> ***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.*
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> ***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."*

30. From a reading of the above, it can be established that the Court in an application under Order XXII Rule 9(2) of the CPC has to follow justice oriented approach while adjudicating upon such matters.

31. In ***Chinnammal v. P. Arumugham***, (1990) 1 SCC 513, the Supreme Court has expressed the need to follow justice-oriented

Approach while interpreting provision of the CPC. The relevant paragraph from the judgment is reproduced as under-

> *"**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, not unreasonable to demand restitution from a person who has purchased the property in court auction being aware of pending appeal against the decree."*

32. As regards the submission of the learned counsel for the appellant that the liability which arose on account of alleged non-payment of invoices raised upon the partnership firm could, in no manner, become the liability of a legal heir of one of the partners of the firm after dissolution of the partnership firm, is concerned, it is rightly held by the learned Single Judge that it is a matter on merits which shall be considered at the appropriate stage, when the Suit filed by the respondent no.1 as well as the claim of set off raised by the deceased Late Mr. J.P. Gupta will be decided.

33. Further, the reliance by the learned counsel for the appellant on the Judgements of Supreme Court in ***S.P. Misra*** (supra), and ***Annapurna B. Uppin*** (supra), is wholly misplaced and untenable in the present context. The aforesaid judgements are distinguishable from the facts of the present case, in as much as, in the said cases, the respondents therein were neither the partner in the partnership firm nor they have derived any assets and liabilities arising out of the partnership firm, and therefore, it was held that decree was not

executable against the respondent therein. The same is not the case here because of admissions of the Late ShriJ.P. Gupta who has taken over the firm as a sole proprietor and thereafter by the appellant the death of his father/defendant no. 2.

34. In addition to the above, there is a delay of 343 days in filing of the appeal. The only ground urged to seek condonation of this delay by the appellant is that the parties were trying to explore the possibility of amicable settlement and further the appellant was unable to consult with his counsel despite diligent efforts, which hindered the timely filing/preparation of the necessary legal proceedings. It was also stated that a review of the Impugned Order was also filed by the appellant. However, the same was dismissed as withdrawn. The Application for condonation is devoid of merit and does not reason why the appellant could not file the present appeal within time.

35. In view of the aforesaid, we find no merit in the present appeal. The same, along with pending applications, is dismissed, both on ground of delay and on merit.

36. However, we make it clear that no observation made herein above shall affect the merits of the Suit before the learned Single Judge.

RENU BHATNAGAR, J.

NAVIN CHAWLA, J.

JULY 28, 2025/KZ/*VS*

Click here to check corrigendum, if any