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

% Date of Decision: 03.09.2026

CNR No. DLHC010290852019

+ **FAO 272/2019**

MAYA DEVI

.....Appellant

Through: Ms. Renu Gupta and Mr. Hardik
Malik, Advocates

versus

MANOHAR LAL (DECEASED) THR LRS & ORS

.....Respondents

Through: Mr. R.S. Chowdhary, Advocate
for R-2 & R-3

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

CM APPL. 31128/2019 (delay)

1. This application has been filed on behalf of the appellant seeking condonation of delay of 12 days in filing the accompanying appeal.
2. For the reasons stated in the application, the same is allowed and the delay is condoned.
3. The present application is disposed of.

FAO 272/2019

1. The appellant has preferred the present appeal challenging the order dated 11.02.2019 passed by the learned ADJ-06 (Central), *Tis Hazari Courts*, in **RCA No. 61518/2016**, whereby the application filed by the appellant under Order XXII Rules 3, 4, & 9 CPC was dismissed.
2. Briefly stated, the appellant (original plaintiff no. 1) along with



respondent nos. 8 to 15 (original plaintiff nos. 2 to 9) instituted **Suit No. 484/1996** seeking partition of property bearing shop no. 204/13, *Teliwara, Delhi*, against respondent nos. 1 to 7 (original defendant nos. 1 to 7). The said suit was dismissed *vide* judgment dated 27.05.2000 as not maintainable. Aggrieved thereby, the plaintiffs preferred an appeal, bearing **RCA No. 27/2000**, wherein *vide* judgment dated 05.10.2002, the finding on maintainability was set aside and the matter was remanded to the Trial Court. The said remand order was assailed by respondent nos. 1 to 7 before this Court in **FAO No. 334/2003**, but the same came to be dismissed *vide* judgment dated 14.09.2011.

3. Upon remand, the suit was registered as **Suit No. 94/11/93** and came to be dismissed *vide* judgment dated 30.05.2012. The appellant and respondent nos. 8 to 15 challenged the said judgment by filing the underlying appeal, being **RCA No. 61518/2016**. During the pendency thereof, *Sh. Manohar Lal* (respondent no. 1) passed away on 01.05.2016, *Smt. Babita* (respondent no. 5) passed away on 25.09.2016, and *Sh. Lekhraj* (legal representative no. 'A' of appellant no. 3) died on 20.01.2017.

Subsequently, on 30.01.2018, the appellant filed the subject application under Order XXII Rules 3, 4, & 9 CPC praying for setting aside the abatement of the appeal against the deceased parties and for bringing on record their proposed legal representatives to proceed with the RCA. However, *vide* the impugned order dated 11.02.2019, the learned ADJ dismissed the subject application on the ground that the appellant had failed to assign sufficient cause for setting aside the abatement *qua* the three deceased parties, and directed the appeal to be



listed for final arguments. Aggrieved by the said dismissal, the appellant has preferred the present appeal.

4. Learned counsel for the appellant contends that the underlying proceeding arises out of a suit for partition in respect of immovable property, where the *res* remains intact and the right to sue survives to and against the legal representatives of the deceased co-sharers. It is contended that in a partition suit, all co-sharers and their heirs are necessary parties, and in the absence of even a single co-sharer, no effective decree can be passed. In support of this contention, reliance is placed on the decisions in Ramnath Kisanlal Vs. Ramgopal Bhaulal & Ors.¹, Hara Dhan Palit Vs. Panchanan Palit², and Raghunandan Singh & Ors. Vs. Rambalak Singh & Ors.³. It is further contended that the appellant is an illiterate lady, had no direct contact with the legal representatives of the deceased parties, and could not ascertain their complete particulars earlier. It is also pointed out that *Smt. Savita*, the widow of deceased *Sh. Lekhraj*, approached the Court under Order I Rule 10 CPC through the DSLSA seeking impleadment along with her minor children.

5. Learned counsel for respondent nos. 2 and 3 submits that the factum of the death of respondent no. 1 was recorded in Court on 28.09.2016, and the death of respondent no. 5 was recorded on 22.02.2017. It is submitted that despite knowledge, the appellant failed to take requisite steps within the statutory period of limitation, resulting in automatic abatement, and that the subject application filed on 30.01.2018

¹ 1949 SCC OnLine MP 101

² 1942 SCC OnLine Cal 149

³ 1963 SCC Online Pat 79



did not disclose sufficient cause to set aside the abatement. It is further submitted that the appeal would abate *qua* only the one deceased appellant, namely *Sh. Lekhraj*, but would otherwise continue with respect to the other appellants.

6. I have heard the learned counsels for the parties and carefully examined the record as well as the law sought to be relied upon.

7. Learned counsel for the appellant has placed reliance upon the decisions in *Ramnath Kisanlal* (*supra*), *Hara Dhan Palit* (*supra*), and *Raghunandan Singh* (*supra*), all rendered by Division Benches of different High Courts, in support of his contention that the underlying appeal cannot be effectively proceeded with in the absence of even one of the co-sharers or their legal representatives. Suffice it to note that the same issue has been considered by the three-Judge Bench of the Supreme Court in *Venigalla Koteswaramma Vs. Malampati Suryamba & Ors.*⁴. The said decision was rendered in the context of a case that had arisen out of a suit for partition and was concerned *inter alia* with the effect of non-substitution of the legal representatives of a deceased co-sharer during the pendency of the appeal. While considering the effect of such abatement, the three-Judge Bench *inter alia* considered the principles laid down by the Division Bench of the Supreme Court in *State of Punjab Vs. Nathu Ram*⁵ and by the Constitution Bench of the Supreme Court in *Sardar Amarjit Singh Kalra v. Pramod Gupta*⁶, and held as under:-

“44. Admittedly, steps were not taken for substitution of the legal representatives of Defendant 2, who was Respondent 3 in AS No. 1887 of 1988. Therefore, sub-rule

⁴ (2021) 4 SCC 246

⁵ 1961 SCC OnLine SC 137

⁶ (2003) 3 SCC 272



(3) of Rule 4 of Order 22 of the Code directly came into operation and the said appeal filed by Defendants 16 to 18 abated against Defendant 2 (Respondent 3 therein). ...

44.1. Once it is found that the appeal filed by Defendants 16 to 18 abated as against Defendant 2 (Respondent 3), the question arises as to whether that appeal could have proceeded against the surviving respondents i.e. the plaintiff and Defendants 1 and 3 (who were Respondents 1, 2 and 4). For dealing with this question, we may usefully refer to the relevant principles, concerning the effect of abatement of appeal against one respondent in case of multiple respondents, as enunciated and explained by this Court.

44.2. The relevant principles were stated and explained in depth by this Court in *State of Punjab v. Nathu Ram*¹³. In that case, the Punjab Government had acquired certain pieces of land belonging to two brothers jointly. Upon their refusal to accept the compensation offered, their joint claim was referred to arbitration and an award was passed in their favour that was challenged by the State Government in appeal before the High Court. During pendency of appeal, one of the brothers died but no application was filed within time to bring on record his legal representatives. The High Court dismissed¹⁴ the appeal while observing that it had abated against the deceased brother and consequently, abated against the surviving brother too. The order so passed by the High Court was questioned before this Court in appeal by certificate of fitness.

44.3. While dismissing the appeal and affirming the views of the High Court, this Court in *Nathu Ram case*¹³ enunciated the principles concerning the effect of abatement and explained as to why, in case of joint and indivisible decree, the appeal against the surviving respondent(s) cannot be proceeded with and has to be dismissed as a result of its abatement against the deceased respondent; the basic reason being that in the absence of the legal representatives of deceased respondent, the appellate court cannot determine between the appellant and the legal representatives anything which may affect the rights of the



legal representatives. This Court pointed out that by abatement of appeal qua the deceased respondent, the decree between the appellant and the deceased respondent becomes final and the appellate court cannot, in any way modify that decree, directly or indirectly.

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44.7. The principles aforesaid have been duly applied by this Court in Hemareddi v. Ramachandra Yallappa Hosmani¹⁷. In that case, one Govindareddi died, leaving behind two sons Shriram Reddy and Basavareddi and a daughter. Two sons of Shriram Reddy filed a civil suit with respect to the property in question on the ground that the said property was a joint family property belonging to them. In that suit, the plaintiffs impleaded the wife of Basavareddi as Defendant 2 and challenged the adoption of Defendant 1 by her. The suit was dismissed by the trial court, while upholding the adoption of Defendant 1. The plaintiff brothers appealed against the said decree of the trial court. During pendency of that appeal, one of the appellants expired but his legal representatives were not brought on record and, consequently, the appeal abated qua the deceased appellant. The High Court took the view¹⁸ that having regard to the decree passed, the appeal would abate not only qua the deceased appellant but as a whole. This Court affirmed the view of the High Court while observing that looking to the facts of the case and nature of decree of the trial court, any decree passed in favour of the surviving appellant would be inconsistent with the decree that had attained finality between the deceased appellant and the defendants.

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45. In the present case, it remains rather indisputable that the appeal in the High Court by Defendants 16 to 18 (AS No. 1887 of 1988), abated against Defendant 2 Malempati Radhakrishnamurthy (who was Respondent 3 in appeal).

45.1. When we apply the principles aforesaid to the present case, it is not far to seek that the said appeal by Defendants 16 to 18, after having abated against Defendant 2 Malempati Radhakrishnamurthy, could not have been proceeded against the surviving respondents i.e. the plaintiff



and Defendants 1 and 3. This is for the simple reason that the trial court had specifically returned the findings that the agreement Ext. B-10 was not valid and Defendants 16 to 18 (appellants of AS No. 1887 of 1988) derived no rights thereunder. The trial court had also ordered that Defendants 13, 14 and 16 were liable for mesne profits in respect of the immovable properties in their possession belonging to Annapurnamma till they deliver possession of those items to plaintiff and Defendants 1 to 3. Such findings in relation to the invalidity of the agreement Ext. B-10 and consequential decree for partition, for delivery of possession and for recovery of mesne profits attained finality qua Defendant 2 Malempati Radhakrishnamurthy; and his entitlement to one-fourth share in the suit properties (including the property covered by Ext. B-10) also became final when the appeal filed by Defendants 16 to 18 abated qua him. If at all the appeal was proceeded with and the alleged agreement Ext. B-10 was upheld (which the High Court has indeed done), inconsistent decrees were bound to come in existence, and have in fact come in existence.

45.2. As noticed, the High Court has proceeded to hold that Ext. B-10 agreement is valid and binding on the plaintiff and Defendants 1 to 3. This part of decree is in stark contrast, and is irreconcilable, with the decree in favour of Defendant 2 which has attained finality that the said agreement Ext. B-10 is neither valid nor binding on Defendant 2. The High Court has gone a step further to say that the plaintiff and Defendants 1 to 3 were under obligation to execute sale deed in favour of Defendants 16 to 18. Though making of such an observation in this suit, that heirs of Annapurnamma were under obligation to execute a sale deed in favour of Defendants 16 to 18, remains seriously questionable in itself but, in any event, this observation could not have been made qua the deceased Defendant 2.

46. When the inconsistencies galore are writ large on the face of the record, the inescapable conclusion is that the appeal filed by Defendants 16 to 18 could not have proceeded further after its abatement against Defendant 2 (Respondent 3).”



8. The aforesaid principle applies to the present case. The underlying proceedings arise out of a suit for partition, and the deceased persons were co-sharers, i.e. the respective branches of the family having an interest in the suit property. Therefore, their legal representatives are necessary for an effective and complete adjudication of the appeal. If the appeal were permitted to abate *qua* even one co-sharer while proceeding with respect to the others, it would inevitably result in an imperfectly constituted proceeding and create the risk of inconsistent decrees concerning the very same subject property. The submission of learned counsel for respondent nos. 2 and 3 that the appeal could abate against *Sh. Lekhraj* and proceed *qua* the remaining appellants thus cannot be accepted.

9. The question that now falls for consideration before this Court is whether, in the facts and circumstances of the present case, sufficient cause exists for condoning the delay in filing the subject application under Order XXII Rules 3, 4 & 9 CPC, setting aside the abatement of the appeal *qua* the deceased parties, and bringing their proposed legal representatives on record for adjudication of the rights of all concerned parties on merits.

10. The record reveals that the subject matter of the dispute is an immovable commercial property, being Shop No. 204/13, *Teliwara, Delhi*. The dispute among the family members has been pending since the institution of the partition suit over three decades ago. The proceedings before the Court below are statedly pending at the stage of bringing on record the legal representatives of respondent no. 8A.

11. The explanation tendered by the appellant for the delay in filing



the subject application was that she is an illiterate lady, was not in direct contact with the legal representatives of the deceased persons, and faced difficulty in procuring their particulars. Furthermore, Smt. Savita, the widow of deceased appellant no. 3A, Sh. Lekhraj, herself approached the Court along with her minor children under Order I Rule 10 CPC through DSLSA seeking to be impleaded as a party.

12. In this regard, a gainful reference may also be made to the decision in Om Prakash Gupta alias Lalloowa Vs. Satish Chandra⁷, wherein, while dealing with an application for setting aside abatement, the Supreme Court reiterated the principles laid down in Perumon Bhagvathy Devaswom Vs. Bhargavi Amma⁸ as under:-

“9. The principles to guide courts while considering applications for setting aside abatement and application for condonation of delay in filing the former application are laid down by this Court in Perumon Bhagvathy Devaswom v. Bhargavi Amma³⁰. An instructive passage from such decision reads as follows:

“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

⁷ (2021) 4 SCC 246

⁸ (2008) 8 SCC 321



- fides, deliberate inaction or negligence on the part of the appellant.*
- (ii) *In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*
- (iii) *The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.*
- (iv) *The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.*
- (v.) *Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the*



High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.”

13. The aforesaid principles are attracted with considerable force in the present case. The present *lis* concerns substantive rights in an immovable property and has remained pending for over three decades. Permitting the abatement to stand would not be a mere penalty for a procedural lapse, but would completely preclude an effective and complete adjudication of the rights of the respective branches of the family in the suit property.

14. It is trite that procedure is the handmaiden of justice (Ref: Sital Prasad Saxena Vs. Union of India⁹ and Bhagwan Swaroop & Ors. Vs. Moolchand & Ors.¹⁰) and is intended to advance substantive justice rather than to penalize parties for procedural lapses. Where substantive rights in immovable property are at stake and the litigation has been pending for over three decades, throwing out the proceedings on procedural technicalities without an adjudication on merits would gravely harm the interests of the parties. Given the nature of a suit for partition, the presence of all the legal representatives is necessary to avoid multiplicity of proceedings and to ensure a complete and final adjudication of the shares of the respective branches of the family in the suit property.

15. Considering the totality of circumstances, this Court is of the opinion that the ends of justice would be better served by setting aside the

⁹ (1985) 1 SCC 163

¹⁰ (1983) 2 SCC 132



abatement and permitting the appeal to be adjudicated on merits, rather than bringing the decades-old *lis* to an end on account of a procedural lapse.

16. Consequently, the present appeal is allowed and the impugned order is set aside.

17. The abatement of the underlying appeal *qua* the deceased persons concerned is set aside and their legal representatives, as detailed in the application dated 30.01.2018, are brought on record in the underlying appeal bearing **RCA No. 61518/2016**.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 03, 2026

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(corrected & releases on 17.09.2026)