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

Date of decision: 21st JANUARY, 2026

IN THE MATTER OF:

\+ **CS(OS) 132/2019**

M/S GLOBAL AGRO CORPORATION PVT. LTD. .....Plaintiff

Through: Mr. Tanmay Mehta, with Mr. Vijay Kumar Wadhwa, Advocates

versus

SHRI AJAY SHARMA & ORS .....Defendants

Through: Mr. Manik Dogra, Senior Advocate along with Mr. Kapil Rustagi, Mr. Rohan Jaitley, Mr.Tanvir Nayar, Mr. Dev Pratap Shahi and Mr.Dhruv Pande, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

I.A. 620/2023 & I.A. 97/2026

1. I.A. 620/2023 has been filed on behalf of the Plaintiff under Order XXII Rule 4 of CPC for bringing on record the Legal Heirs (**LRs**) of the deceased Defendant No.1 – Shri Ajay Sharma.

2. I.A. 97/2026 has been filed on behalf of the Plaintiff under Section 5 of the Limitation Act, 1963, seeking condonation of delay in filing the application i.e., I.A. 620/2023 which is for bringing on record the Legal Heirs of the deceased Defendant No.1 – Shri Ajay Sharma.

3. The instant Suit has been filed by the Plaintiff for specific performance of an Agreement to Sell dated 23.08.2015 in respect of the

Property bearing No.C-69, land area measuring 317 sq. yards, in Block C, situated in the approved colony known as Shivaji Park, near Punjabi Bagh, New Delhi – 110026 **["Suit Property"].**

4. The Plaintiff herein is a company incorporated under the Companies Act, 2013. Prior to incorporation, the Plaintiff was a partnership firm under the name style of M/s Global Agro Corporation. As per the Plaint, the Suit Property was owned by one Sh. Maharaj Krishan Sharma, who passed away intestate on 10.06.2004, leaving behind the Defendants i.e., his wife and children, who have jointly inherited the Suit Property.

5. It is stated that a Collaboration Agreement dated 23.08.2008 for reconstruction/redevelopment of the Suit Property was entered into with one Mr. Ashish Bansal, who was at the relevant point of time the Director of the Plaintiff. It is stated that Mr. Ashish Bansal resigned from the Plaintiff Company and transferred his shares in favour of one Mr. Manish Goel, who was also one of the Directors of the Plaintiff. It is stated that *vide* an Assignment Deed dated 20.01.2021, all the right, title and interest in the Plaintiff Company was assigned in favour of Mr. Ashish Bansal.

6. It is stated that, thereafter, an application being I.A. 389/2023 was filed under Order XXII Rule 10 of CPC by Mr. Ashish Bansal seeking impleadment/substitution of himself as the Plaintiff in the present Suit which was allowed by this Court vide Order dated 05.12.2025. Mr. Ashish Bansal is, therefore, now prosecuting the present Suit.

7. Summons in the Suit were issued on 19.03.2019. Defendant No.1 – Ajay Sharma could not be served. However, Defendant No.2 has been served and he has filed his written statement. On 20.12.2024, a statement was made by the learned Counsel for the Plaintiff that it has come to his

knowledge that Defendant No.1 has passed away and necessary steps will be taken to bring on record the LRs of Defendant No.1. Defendant No.2, who is the brother of the Defendant No.1, did not inform the Court that Defendant No.1 has passed away.

8. It is stated by the learned Counsel for the Plaintiff that the death of Defendant No.1 could be ascertained only somewhere around 11.07.2022, when the Investigating Officer (**IO**) in a complaint case pending before the Court of Metropolitan Magistrate concerned with Punjabi Bagh Police Station, confirmed the news of death of Defendant No.1. It is stated that, thereafter, the Plaintiff started to gather the details of the LRs of the Defendant No.1 and came to know about Defendant No.1's wife and his two sons, however, the name of the second son was not known.

9. Resultantly, the Plaintiff filed the I.A. 620/2023 for bringing on record the LRs of the deceased Defendant No.1. It is stated in the application that Defendant No.1 was not staying in the Suit Property and left the same long ago and, therefore, no contact could be established with him. It is pertinent to mention that along with the said application, no application seeking condonation of delay in bringing on record the LRs of Defendant No.1 was filed by the Plaintiff. When the case came up for hearing before this Court on 05.12.2025, I.A. 620/2023 was argued by the learned Counsel for the Plaintiff and reliance was placed on a Judgment passed by the Apex Court in Om Prakash Gupta v. Satish Chandra, **2025 SCC OnLine SC 291**, wherein the Apex Court has held that the application for setting aside of the abatement is in-built in the application for bringing on record the LRs of a party who passed away during the pendency of the Suit. Reliance was placed on paragraph Nos.16 & 20 of the said Judgment which read as under:

> ***"16.*** *The law, laid down in Ram Charan (supra), is clear. There seems to be no legal requirement that on the death of a defendant, an application for substitution in all cases has to be made by the plaintiff only and that, any application, made by the heir(s)/legal representative(s) of the deceased defendant seeking an order to allow him/them step into the shoes of the deceased defendant and to contest the suit, cannot be considered. Once an application has been made by either party and the court has been informed about the death of a party and who the heir(s)/legal representative(s) he has left behind, the only thing that remains for the court is to pass an order substituting the heir(s)/legal representative(s). Such being the case, we have no doubt in holding that the application moved by the heirs of Satish Chandra (Civil Misc. Substitution Application No. 211 of 1997), whereby the court was informed by them of his death and the heirs that he had left behind, amounted to an application for substitution which was legally permissible and valid and deserved consideration.*
>
> *xxx*
>
> ***20.*** *The High Court having been duly informed of the death of Satish Chandra, and substitution having been prayed by the heirs of the deceased, it ought to have proceeded to consider such application and pass an order bringing the heirs of the deceased respondent on record. This, the High Court omitted to order, perhaps, due to inadvertence whereby pendency of the application for substitution filed by the heirs of Satish Chandra escaped its notice."*

10. The case was, thereafter, listed on 08.12.2025 for directions and on the said date, the case was directed to be listed on 15.01.2026.

11. In the meantime, by way of abundant caution, the Plaintiff has also

filed an I.A. 97/2026 under Section 5 of the Limitation Act, seeking condonation of delay in filing the application i.e., I.A. 620/2023, which is for bringing on record the LRs of the deceased Defendant No.1. Paragraph Nos. 5 to 9 of the said application reads as under:

> *"5. That sometime in December 2021, some news regarding the death of the Defendant no. 1 came to be circulated and the counsel for the plaintiff so apprised the Hon'ble Court of Ld. Joint Registrar on 20/12/2021 regarding the same. That however, despite the best of the efforts of the plaintiff company as well as applicant, the death of defendant no.1 could not be confirmed by any means and hence no step in that regard were taken either by the plaintiff company or the applicant. It is pertinent to mention here that defendant no.2 who happened to be the real brother of the deceased defendant no.1 had also not informed the factum of death of defendant no.1 to this Hon'ble Court and did not comply with provision of order 22 Rule 10A of CPC. That moreover, since the nation was coming out of Corona Pandemic, there were lots of rumours floating around and neither the plaintiff company nor applicant could get a confirmation about the death of the defendant no.1.*
>
> *6. That it is pertinent to mention here that the plaintiff company had filed a Complaint Case under Section 156(3) before the Hon'ble Court of Ld. Metropolitan Magistrate, Police Station Punjabi Bagh. In the proceedings of the said case, the Investigation officer has filed a status report on 11/07/2022 wherein the news of the death of the defendant no.1 Shri Ajay Sharma was confirmed by the Investigation officer. That thereafter, the Applicant started trying to gather the details of the legal heirs of the deceased defendant no. 1. That though the applicant/plaintiff got to know about the name of wife of the deceased defendant no. 1*

from the said status report as filed before the said Hon'ble Court but could not get the details of other legal heirs/representative /children of the deceased defendant no.1.

7. That though there was some news circulating about the death of the defendant no. 1 but the same could never be confirmed till the time the investigation officer had filed his status report in the complaint pending before the Court of Hon'ble MM, Tis Hazari. That even till filing the reply to IAs no. 620/2023 by the legal heirs of deceased defendant no.1, the plaintiff/applicant was not in the knowledge of the date of death of the defendant no. 1. That despite the best of the efforts, the applicant/ plaintiff could not get the details of any other legal representative/heirs of the deceased defendant no.1. That in the absence of complete particulars of other legal heirs of deceased defendant no.1, applicant was not able to file the application during the said period. That the defendant no. 1 did not live at the suit properly and left the same since long and therefore there was no one available at the suit property on behalf of defendant no. l and defendant no. l was not being served with the notice of suit as issued by this Hon'ble Court at the address as was available to the plaintiff.

8. That it was only in the second week of December 2022, that the applicant/plaintiff got to know the name of one of the sons of the deceased defendant no. 1 and on the basis of limited knowledge, the applicant, being an assignee of plaintiff company, had on 09/01/2023, filed the application for impleadment of legal heirs of deceased defendant no.1, which was got registered as IA no. 620/2023 mentioning the name of wife and one of the son of deceased defendant no.1 and the name of other son was not known to the applicant till the legal heirs filed the reply to the IAs no. 620/2023 and I.A.

No.389/2023, with their supporting affidavits.

9. That the application for brining on record legal heirs of deceased defendant could not be filed within time because of the reasons mentioned herein before and the non-filing of the same within the period of limitation was neither intentional nor deliberate but due to the facts that the Applicant/plaintiff was not sure/confirmed about the death of the defendant no. 1 and also the particulars of the Legal Heirs/ representatives of the deceased defendant no. 1. It is pertinent to mention here that though it was second week of December 2022, that the applicant got to know of limited knowledge about the legal heirs of deceased defendant, however in order to avoid further legal technicalities as well as a matter of abundant caution, the present application for seeking condonation of delay in filing an application being I.A. no. 620/2023 for brining on record the legal heirs of deceased defendant is being moved . That if the delay in filing the application being I.A. no.620/2023, is calculated from 30/05/2022 (expiry of 90 days after 28/02/022 i.e. COVID-19 period) then there is a delay of 222 days in filing the application no. I. A. 620/2023 and if they delay is calculated from 11/07/2022, the date of confirmation of death of defendant no.1, as provided by the investigation officer in complaint case, then there is a 181 days delay in filing the application being I.A. 620/2023."

12. Reply to the aforesaid application i.e., I.A. 97/2026 has been filed by the LRs of Defendant No.1. In the reply, it is stated that the application for condonation of delay is not *bona fide*. It is stated that the application has been filed only by an Assignee and not by the original Plaintiff, and that the Assignee does not have any *locus* to file the application. It is further stated Article 120 of the Schedule to the Limitation Act, 1963 provides that the

period of limitation to file an Application under Order XXII Rule 4 CPC is 90 days from the date of death of a party, which Article 121 provides that the period of limitation for setting aside the abatement is 60 days. Since the Defendant No.1 passed away on 05.09.2021, the limitation to file the application for bringing on record the LRs of Defendant No.1 would have expired on 04.12.2021 and since no application was filed till the said date, the Suit automatically got abated *qua* Defendant No.1. It is also stated that it cannot be said that the Plaintiff was not aware of the date of death of Defendant No.1, as when the Defendant No.1 passed away a prayer meeting was held on 17.09.2021 which was duly attended by the father of the Plaintiff. It is stated that since the father of the Plaintiff was well aware that Defendant No.1 had passed away, it cannot be said that the Plaintiff was not aware of the same. Reliance has also been placed on WhatsApp messages exchanged between the father of the Plaintiff which belie the Plaintiff's alleged lack of knowledge regarding the death of Defendant No.1. It is, therefore, stated that the application is completely bereft of *bona fides*.

13. Heard the learned Counsels appearing for the Parties and perused the material on record.

14. At the outset, it is to be noted that Order XXII Rule 10A of CPC mandates that it is the duty of the pleader to communicate the date of death of a party who passes away during the pendency of the Suit. Order XXII Rule 10A of CPC reads as under:

> ***"Order XXII Rule 10A. Duty of pleader to communicate to Court death of a party.****—Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give*

> *notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.*

15. Thus, it is clear that Order XXII Rule 10A casts a duty on the pleader to communicate to Court about the death of a party to whom he is representing. Defendant No.2, who has entered appearance and has also filed his written statement ought to have informed the Court about the death of Defendant No.1, who is his brother. The purpose of Order XXII Rule 10A is that the Courts must be informed at the earliest about the death of a party so that steps can be taken to bring on record the legal representatives of the deceased party during the pendency of the Suit. In the opinion of this Court, the Defendant No.2 has failed to perform the duty cast upon him under Order XXII Rule 10A of CPC.

16. It must be borne in mind that the Plaintiff, who has filed the present Suit, is a company incorporated under the Companies Act and unless it is informed about the death of Defendant No.1, it would not be in a position to bring on record the LRs of Defendant No.1 on record. Mr. Ashish Bansal, to whom all the right, title and interest in the Plaintiff Company were assigned, was substituted as the Plaintiff only on 05.12.2025. The fact that Mr. Ashish Bansal knew about the death of Defendant No.1 cannot be construed as a knowledge of the Plaintiff Company. This Court has to only test as to whether the application for condonation of delay in filing the application i.e., I.A. 620/2023, which is for bringing on record the LRs of the deceased Defendant No.1, can be allowed and the LRs of Defendant No.1 can be brought on record or not.

17. Reference in this regard is made to the Judgment of the Apex Court in

Om Prakash Gupta (supra), wherein the following observations have been made:

> ***"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 Amma. An instructive passage from such decision reads as follows:*
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> *"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.*
>
> *(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."

(emphasis supplied in original)

The aforesaid passage is followed by other instructive passages too on special factors which have a bearing on what constitutes "sufficient cause", with reference to delay in applications for setting aside abatement and bringing the legal representatives on

record. To the extent relevant for decisions on these two appeals, the same are extracted hereunder:

> *"15. The first is whether the appeal is pending in a court where regular and periodical dates of hearing are fixed. There is a significant difference between an appeal pending in a subordinate court and an appeal pending in a High Court. In lower courts, dates of hearing are periodically fixed and a party or his counsel is expected to appear on those dates and keep track of the case. The process is known as 'adjournment of hearing'. ...*
>
> *16. In contrast, when an appeal is pending in a High Court, dates of hearing are not fixed periodically. Once the appeal is admitted, it virtually goes into storage and is listed before the Court only when it is ripe for hearing or when some application seeking an interim direction is filed. It is common for appeals pending in High Courts not to be listed at all for several years. (In some courts where there is a huge pendency, the non-hearing period may be as much as ten years or even more.) When the appeal is admitted by the High Court, the counsel inform the parties that they will get in touch as and when the case is listed for hearing. There is nothing the appellant is required to do during the period between admission of the appeal and listing of the appeal for arguments (except filing paper books or depositing the charges for preparation of paper books wherever necessary). The High Courts are overloaded with appeals and the litigant is in no way responsible for non-listing for several years. There is no need for the appellant to keep track whether the respondent is dead or alive by periodical enquiries during the long period between admission and listing for hearing. When an appeal is so kept pending in suspended*

animation for a large number of years in the High Court without any date being fixed for hearing, there is no likelihood of the appellant becoming aware of the death of the respondent, unless both lived in the immediate vicinity or were related or the court issues a notice to him informing the death of the respondent.

17. The second circumstance is whether the counsel for the deceased respondent or the legal representative of the deceased respondent notified the court about the death and whether the court gave notice of such death to the appellant. Rule 10-A of Order 22 casts a duty on the counsel for the respondent to inform the court about the death of such respondent whenever he comes to know about it. When the death is reported and recorded in the order-sheet/proceedings and the appellant is notified, the appellant has knowledge of the death and there is a duty on the part of the appellant to take steps to bring the legal representative of the deceased on record, in place of the deceased. The need for diligence commences from the date of such knowledge. If the appellant pleads ignorance even after the court notifies him about the death of the respondent that may be an indication of negligence or want of diligence.

18. The third circumstance is whether there is any material to contradict the claim of the appellant, if he categorically states that he was unaware of the death of the respondent. In the absence of any material, the court would accept his claim that he was not aware of the death.

19. Thus it can safely be concluded that if the following three conditions exist, the courts will usually condone the delay, and set aside the abatement (even though the period of delay is

considerable and a valuable right might have accrued to the opposite party—LRs of the deceased—on account of the abatement):

(i) The respondent had died during the period when the appeal had been pending without any hearing dates being fixed;

(ii) Neither the counsel for the deceased respondent nor the legal representatives of the deceased respondent had reported the death of the respondent to the court and the court has not given notice of such death to the appellant;

(iii) The appellant avers that he was unaware of the death of the respondent and there is no material to doubt or contradict his claim.

(emphasis supplied)

10. *Having the benefit of the aforesaid pertinent guiding principles, we also consider it prudent to dwell on another matter of some importance which quite frequently this Court is called upon to consider. It is the appropriate sequence in which remedies available to have an order for setting aside abatement of a suit should be pursued. This discussion is necessitated in view of the facts in C.A. No. 13408 of 2024 revealing that the appellants had applied for substitution and an application for condonation of delay in filing the former application was filed, without there being an application for setting aside the abatement.*

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 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."*

18. The Apex Court in the aforesaid Judgment has held that on gaining the knowledge of death of a Party, the remedy is to file an application to bring on record the LRs of that Party who passed away and the said application has to be filed within a period of 90 days. In addition, the application for setting aside abatement should be filed within 60 days after the expiry of 90 days.

19. In the opinion of this Court, the Plaintiff has given sufficient cause which prevented it from filing an application for condonation of delay. It is also contended by the learned Counsel for the Defendant No.2 that there is no application for setting aside the abatement of the Suit. With respect to the question as to whether a separate prayer of abatement is mandated or not, the Apex Court in Om Prakash Gupta (supra) has observed as under:

"14. *Order XXII of the Code of Civil Procedure is titled DEATH, MARRIAGE AND INSOLVENCY OF PARTIES. Rule 4 thereof lays down the procedure in case of death of one of several defendants or of sole defendant. It is clear on perusal of such rule that it does not expressly provide who between the parties to a civil suit is to present an application for substitution.*

15. *In Union of India v. Ram Charan, this Court held:*

> *"10. It is not necessary to consider whether the High Court applied its earlier Full Bench decision correctly or not when we are to decide the main question urged in this appeal and that being the first contention. Rules 3 and 4 of Order 22 CPC lay down respectively the procedure to be followed in case of death of one of several plaintiffs when the right to sue does not survive to the surviving plaintiffs alone or that of the sole plaintiff when the right to sue survives or of the death of one several defendants or of sole defendant in similar circumstances. The procedure requires an application for the making of the legal representatives of the deceased plaintiff or defendant a party to the suit. It does not say who is to present the application. Ordinarily it would be the plaintiff as by the abatement of the suit the defendant stand to gain. However, an application is necessary to be made for the purpose. If no such application is made within the time allowed by law, the suit abates so far as the deceased plaintiff is concerned or as against the deceased defendant. The effect of such an abatement on the suit of the surviving plaintiffs or the suit against the surviving defendants depends on other considerations as held by this Court in State of Punjab v. Nathu Ram [AIR 1962 SCR 89] and Jhandha Singh v. Gurmukh*

Singh [CA No. 344 of 1956 decided on April 10, 1962]. Anyway, that question does not arise in this case as the sole respondent had died."

(emphasis supplied)

16. *The law, laid down in Ram Charan (supra), is clear. There seems to be no legal requirement that on the death of a defendant, an application for substitution in all cases has to be made by the plaintiff only and that, any application, made by the heir(s)/legal representative(s) of the deceased defendant seeking an order to allow him/them step into the shoes of the deceased defendant and to contest the suit, cannot be considered. Once an application has been made by either party and the court has been informed about the death of a party and who the heir(s)/legal representative(s) he has left behind, the only thing that remains for the court is to pass an order substituting the heir(s)/legal representative(s). Such being the case, we have no doubt in holding that the application moved by the heirs of Satish Chandra (Civil Misc. Substitution Application No. 211 of 1997), whereby the court was informed by them of his death and the heirs that he had left behind, amounted to an application for substitution which was legally permissible and valid and deserved consideration."*

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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. 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 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. <u>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.</u> 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)

20. A perusal of the dictum of law as laid down by the Apex Court demonstrates that upon getting the knowledge of death of a Party, once an application for bringing on record the LRs stands filed, the application for setting aside of the abatement is in-built and a separate application need not be filed.

21. In the opinion of this Court, sufficient cause has been shown by the Plaintiff for delay. Similarly, as noted earlier, Defendant No.2 ought to have informed the Court about the factum of the death of Defendant No.1 so that the erstwhile Plaintiff could have taken steps to bring on record the Legal Heirs of Defendant No.1. The original Plaintiff was a company and no knowledge could have been attributed to it. The Plaintiff was only impleaded as the Plaintiff vide Order dated 05.12.2025 passed by this Court and after being impleaded, the present applications have been filed by the Plaintiff within a reasonable time. Therefore, it cannot be said that the newly impleaded Plaintiff does not have any locus to contend the Suit or that he is barred from filing the application for bringing on record the LRs of Defendant No.1.

22. In view of the above, this Court is inclined to allow the present applications. The LRs of Defendant No.1 are taken on record. Amended memo of parties be filed.

23. The Applications are disposed of.

SUBRAMONIUM PRASAD, J

JANUARY 21, 2026
S. Zakir