



2024:DHC:9258



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

% *Reserved on: 01st October, 2024*
Pronounced on: 28th November, 2024

+ **C.R.P. 82/2024 & CM APPL. 12171/2024**

1. **MR SANJAY JOSHI**

S/o Late Shri Govind Ram Joshi,
R/o 7/159, Ramesh Nagar,
New Delhi-110015

..... Petitioner No. 1

2. **RAJEEV JOSHI**

S/o Late Shri Govind Ram Joshi,
R/o 7/159, Ramesh Nagar,
New Delhi-110015

..... Petitioner No. 2

3. **HEM KANTA JOSHI**

W/o Late Shri Govind Ram Joshi,
R/o 7/159, Ramesh Nagar,
New Delhi-110015

..... Petitioner No. 3

Through: Mr. Rajiv Tyagi & Mr. Rohit Gupta,
Advocates.

versus

1. **MS RENU SOBTI**

D/o Late Shri B.K. Sobti,
R/o B-6/1, Rajouri Garden,
New Delhi-110027

..... Respondent No. 1

2. **PREM SOBTI**

S/o Late Shri B.K. Sobti,
R/o B-6/1, Rajouri Garden,
New Delhi-110027

..... Respondent No. 2

3. **RAJEEV SOBTI (SINCE DECEASED) THROUGH LRs**

S/o Late Shri B.K. Sobti,



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R/o B-6/1, Rajouri Garden,
New Delhi-110027

..... Respondent No. 3

Through: Mr. Anand Mishra, Ms. Vandita Nain
& Ms. Ayushi Rajput, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Revision Petition under *Article 227 of the Constitution of India* read with *Section 115 of the Code of Civil Procedure, 1908* (hereinafter referred to as “CPC, 1908”) has been filed on behalf of the Petitioners/Appellants-Tenants against the Judgment dated 14.02.2024 passed by the learned Rent Control Tribunal (hereinafter referred to as “RCT”) in RCT ARCT/19/2023.
2. The impugned Judgment dated 14.02.2024 encompasses two Orders whereby, *firstly*, the Appeal of the Petitioners/Tenants filed against the Order dated 15.10.2019 *vide* which the Application under *Section 5 of the Limitation Act, 1963* (hereinafter referred to as the “Act, 1963”) as well as Application under *Order XXII Rule 3 of CPC, 1908* filed by legal heirs of Shri B.K. Sobti (since deceased, represented through his legal heirs), seeking substitution of the legal heirs of Late Shri B.K. Sobti was allowed, and *secondly*, Order dated 26.08.2023 *vide* which the Application under *Order XLVII Rule 1* read with *Sections 114 and 151 of CPC, 1908* filed by the Petitioners herein seeking Review of the Order dated 15.10.2019, had been dismissed.



3. **Briefly stated**, the Eviction Petition bearing No. 215/2011 under *Section 14(1)(a),(e) and (h)* read with *Section 25(B) of the Delhi Rent Control Act, 1958* (hereinafter referred to as the “Act, 1958”) was filed by Shri B.K. Sobti (landlord), father of the Respondents herein, against the Petitioners/Tenants on 21.05.2011.

4. Shri B.K. Sobti, the original landlord, died on 24.03.2015, during the pendency of the Petition when the matter had reached the stage of evidence of Petitioners/Tenants. The Application under *Order XXII Rule 3 of CPC, 1908* was eventually filed on 07.04.2016 by the legal heirs of Late Shri B.K. Sobti. Since the Application under *Order XXII Rule 3 of CPC, 1908* was filed beyond limitation, an Application under *Section 5 of the Act, 1963* was filed on 20.01.2017 praying for condonation of delay in filing the Application under *Order XXII Rule 3 of CPC, 1908*.

5. The above-mentioned two Applications were allowed by the learned Additional Rent Controller *vide* Order dated 15.10.2019. Thereafter, the Petitioners/Tenants filed the Application under *Order XLVII Rule 1* read with *Sections 114 and 151 of CPC, 1908* seeking review of the impugned Order dated 15.10.2019. However, the said Application under *Order XLVII Rule 1 of CPC, 1908* was dismissed *vide* Order dated 26.08.2023.

6. Aggrieved by the Orders dated 15.10.2019 and 26.08.2023, the Petitioner/Tenants preferred an Appeal before the RCT. The learned RCT *vide* Judgment dated 14.02.2024 observed that in fact, the Petitioners/Tenants had challenged the Order dated 15.10.2019 *vide* which the Application under *Order XXII Rule 3 of CPC, 1908* along with Application under *Section 5 of the Act, 1963* seeking condonation of delay in filing the Application under *Order XXII Rule 3 of CPC, 1908* was allowed.



However, a subsequent Application under *XLVII Rule 1* read with *Sections 114 and 151 of CPC, 1908* was filed on 28.11.2019 by the Petitioners/Tenants seeking review of the Order dated 15.10.2019, only for the purpose of creating a fresh limitation period for filing an Appeal. *The Appeal challenging the Order dated 15.10.2019 was held to be grossly barred by limitation.*

7. Insofar as the Order dated 26.08.2023 dismissing the Review Application of the Petitioners/Tenants filed against the Order dated 15.10.2019 was concerned, it was observed that Additional Rent Controller had no power to review its own judgment. Even if it is presumed that it had the power to review its own Order/Judgment, there was no illegality found in the rejection of the Review Application. Consequently, the Appeal preferred by the Petitioners/Tenants before the RCT was dismissed *vide* Judgment dated 14.02.2024.

8. **Aggrieved by the Judgment dated 14.02.2024 of RCT, the present Revision Petition has been filed on behalf of the Petitioner/Tenants.**

9. *The grounds of challenge* are that the learned RCT had ignored the legal position of the abatement of the Eviction Petition and had permitted the petition to be continued merely on the basis of an Application under *Order XXIII Rule 3 CPC* for bringing the legal heirs of Late Shri B.K. Sobti on record, along with an Application under *Section 5 of the Act, 1963* for condonation of delay of over more than one year in moving the Application for substitution of legal heirs.

10. It is claimed that the Application under *Order XXII Rule 3 of CPC, 1908* was moved after a delay of about 10 months and the Eviction Petition stood abated automatically. It has been overlooked that after the expiry of



time limit provided in *Articles 120 and 121 of the Scheduled to the Act, 1963*, no proceedings can be continued and they become legally dead by virtue of operation of law. Reliance has been placed on *Madan Naik (dead by LRs) & Ors. vs. Hansubala Devi & Ors.*, AIR 1983 SC 676, wherein it was held that the abatement takes place on its own course by the passage of time and no specific Orders are necessary under *Order XXII Rule 9 of CPC, 1908* for abatement.

11. It is further asserted that despite this legal position, the RCT has wrongly upheld the Order dated 15.10.2019 passed by the Additional Rent Controller thereby allowing the Application under *Order XXII Rule 3 of CPC, 1908* along with an Application under *Section 5 of the Act, 1963* for condonation of delay.

12. Learned counsel for the Petitioners/Tenants has placed reliance on the decisions in *Municipal Corporation of Delhi vs. Yashwant Singh Negi*, (2020) 9 SCC 815 and *T.K. David vs. Kuruppampady Service Cooperative Bank Ltd.*, (2020) 9 SCC 92 (35), wherein it has been held that it is not possible for the Petitioners to challenge the Judgment in Review alone, unless the substantive judgment itself has been challenged. Following this principle, the Petitioners/Tenants had filed the Appeal against the substantive Order dated 15.10.2019 and Order of Review dated 26.08.2023. However, the RCT rather than considering the merits of the substantive Order dated 15.10.2019, considered the legality and dismissed the Appeal solely by considering the Order in the Review Application.

13. It is submitted that RCT failed to consider that the power of Review which is contained in *Section 25B of the Act, 1958* and the recourse to general provisions of *CPC, 1908* could not have been resorted to somehow



dismiss the Appeal of the Petitioner/Tenants. The powers of the Court under *Order XLVII Rule 1 of CPC, 1908* are wide and can be exercised for any error apparent on the face of record or when new matter of evidence comes in the knowledge or there was an error apparent on the face of the Order or any other sufficient reason. The Order of learned Additional Rent Controller suffered from error apparent on the face of the record in allowing the Application under *Order XXII Rule 3 of CPC, 1908* which was contrary to the principles of settled law. The RCT thus fell in error in dismissing the Appeal of the Petitioners/Tenants.

14. It is further submitted that Respondent, who are the legal representatives of Late Shri B.K. Sobti, the original landlord, were given adjournments on various dates for moving an appropriate Application and when they failed to do so, the Additional Rent Controller imposed a cost of Rs. 4000/- upon them as penalty. Despite imposition of costs, no steps were taken for bringing on record the legal heirs.

15. The Application was filed on 07.04.2016 after about a year of demise of Late Shri B.K. Sobti, the original landlord. The Orders passed by the learned Additional Rent Controller and the dismissal of the Appeal by learned RCT are liable to be set aside and the Eviction Petition has to be held to have abated.

16. **The Respondents/Landlord in their Written Submissions** have contended that the Rent Controller was constituted under the Act, 1958 and is not a Civil Court in *stricto sensu* and, therefore, is not amenable to revisional jurisdiction of the Court under *Section 115 of CPC, 1908*.

17. It is also contended that the present Revision Petition does not warrant any interference by this Court in its supervisory jurisdiction under *Article*



227 of the Constitution of India. It is settled principle of law that it is to be exercised sparingly only to ensure that the Courts and the Tribunals remain confined in their receptive jurisdictions and exercise the same in accordance with the fundamental principles of law and justice. The Supreme Court time and again has observed that the Rent Act, 1958 does not provide any second Appeal or revision to this Court. The purpose behind the same for not providing the remedy is to give finality to the Orders passed under the Rent Act, 1958. Power under *Article 227 of the Constitution of India* is exercisable only where there is grave error or injustice caused to a party.

18. It is further contended that the present Revision Petition is the second Appeal in the garb of Revision, filed in sheer abuse of process of law with the sole motive of causing injustice and prejudice to the interest of the Respondents/landlord and the same deserves outright dismissal. There is no jurisdictional error or perversity in the impugned Judgment dated 14.02.2024 so as to invite interference of this Court in its supervisory jurisdiction. Moreover, this is nothing but another attempt by the Petitioners/Tenants to resort to forum shopping to delay grant of lawful reliefs to the Respondents/landlord and unjust enrichment of the Tenants who are occupying the property of the Respondents/landlord.

19. The learned RCT has exercised its jurisdiction and passed the impugned Judgment dated 14.02.2024 after judiciously examining all the facts, evidence and the settled principles of law. The learned Additional Rent Controller has rightly considered the facts and circumstances to allow the Application under *Order XXII Rule 3 of CPC, 1908* for substitution of legal heirs of Late Shri B.K. Sobti and to bring them on record. Though there was some delay in filing the said Application for substitution of legal



heirs, but the time had been extended with the imposition of costs. The delay in moving the substitution of legal heirs has already been condoned and the substitution Application had been permitted to be filed.

20. Furthermore, the time extended by learned Additional Rent Controller was never challenged by the Petitioners/Tenants; rather they accepted the costs imposed by the learned Additional Rent Controller. The delay has been judiciously considered and condoned. It is a settled principle of law that a prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement, even though it is not asked in so many words, but is necessarily implied.

21. Reliance has been placed on the decision in M/s Urvinder Estate Private Ltd. vs. M/s Karam Chand Prem Private Ltd. and Others, ILR (1970) 1 Delhi 210, Ved Parkash Kapur vs. Harish Chander Rastogi, (1967) 3 DLT 341, Shri Mukesh Kumar vs. Smt. Kamlesh Devi & Anr., decided vide CM(M) 189/2022 on 28.02.2022 by this Court, Perumon Bhagvathy Devaswom Perinadu Village vs. Bhargavi Amma (Dead) By LRs & Ors., decided vide Civil Appeal No. 4440/2018 on 11.07.2008, Mithailal Dalsangar Singh and Ors. vs. Annabi Devram Kini and Ors., (2003) 10 SCC 691, Banwari Lal (dead) by Legal Representatives vs. Balbir Singh, (2016) 1 SCC 607, Nagina Singh vs. Naga Singh, (2002) 7 SCC 113, Wander Ltd. and Another vs. Antox India Pvt. Ltd., 1990 (Supp) SCC 727, Nand Kishore and Another vs. Vijay Kumar Gupta, decided vide CM(M) 405/2007 on 16.02.2007 by this Court, Patel Nareshi Thakershi and Others vs. Shri Pradhumansinghji Arjunsinghji, 1970 (3) SCC 844 and S.Murali Sundaram vs. Jothibai Kannan & Ors., decided vide Civil Appeal No. 1167-1170/2023.

22. **Submissions heard.**



23. The record shows that Late Shri B.K. Sobti, the landlord, died on 24.03.2015, the Application for substitution of legal heirs under *Order XXII Rule 3 of CPC, 1908* was filed on 07.04.2016, i.e. almost after more than one year even though it was required to be filed within 90 days.

24. The procedure for substitution of legal heirs in case of demise of either party is provided in *Order XXII CPC, 1908*. *Order XXII Rule 3* deals with substitution of legal heirs of deceased plaintiff, while Rule 4 provides for substitution in case of death of one of the several defendants or the sole defendant.

25. Order XXII Rule 4 Sub-Clause 5 deals with Abatement of Suit, and reads as under: -

“Order XXII – Death, Marriage and Insolvency or Parties

...

(5) Where — (a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963) and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved”.

26. Rule 9 of *Order XXII of CPC, 1908* provides for the consequence of not filing an Application for substitution of legal heir within 90 days, which



reads as under: -

“Order XXII – Death, Marriage and Insolvency or Parties

Rule 9 - Effect of abatement or dismissal:

(1) *Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.*

(2) *The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.*

(3) *The provisions of Section 5 of the 1 [Indian Limitation Act, 1877 (15 of 1877)] shall apply to applications under sub-rule (2).”*

27. Rule 10A of *Order XXII of CPC, 1908* casts a duty on the Counsel of the deceased party represented by him, to communicate to the Court about the death of the party. For this limited purpose, deeming fiction of the contract being kept subsisting between the learned Advocate and the deceased party is introduced so that either party may not be unaware at the time of hearing of the matter.

28. Rule 10A of *Order XXII of CPC, 1908* read as under: -

“Order XXII – Death, Marriage and Insolvency or Parties

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.”*

29. *Articles 120 and 121 of the Act, 1963* prescribes the period within which the aforesaid Applications must be made. According to *Article 120 of*



the Act, 1963, the Application for substitution of legal representative either of plaintiff or defendant, has to be made within 90 days from the date of demise of the party.

30. *Article 121 of the Act, 1963* further provides that an Application to set aside the abatement, has to be made within 60 days of the date of abatement.

31. From these specific provisions, it is evident that the Application for substitution by the legal heirs has to be filed within 90 days which has to be reckoned from the date of demise and not date of knowledge. Further, in case no Application is moved, the Suit automatically abates. No formal order is required for abatement which happens automatically, as has been held in the case of *Mithailal Dalsangar Singh*, (supra).

32. Further 60 days are provided for moving an Application for setting aside the abatement. However, *Section 5 of the Act, 1963* has been made applicable to an Application for setting aside the abatement whereby indicating that even if the Abatement Application has not been filed within the time, the delay can be condoned under *Section 5 of the Act, 1963*.

33. Before considering the principles of condonation of delay, the question which requires deliberation is whether without moving the Application under *Order XXII Rule 9 of CPC, 1908*, the abatement can be set aside by the Court. A reference be again made to *Mithailal Dalsangar Singh*, (supra), wherein the Apex Court had observed that the Courts must adopt a justice-oriented approach dictated by the upper most 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 question of availability of '*sufficient cause*'



within the meaning of *Sub-Rule (1) of Rule (9) of Order XXII* and of *Section 5 of the Act, 1963* deserves to be given weight and once arrived at, would not normally be interfered with by superior jurisdiction.

34. It was further observed in *Mithailal Dalsangar Singh*, (supra) that while 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 abatement, may in substance be construed as a prayer for setting aside abatement.

35. Generally, once the Suit is abated, the Application under *Order XXII Rule 9 of CPC, 1908* and if delayed, supported by *Section 5 of the Act, 1963*, must be filed, but even an Application under *Order XXII Rule 4 of CPC, 1908* seeking substitution of legal heirs in the cases of abatement, would have the effect of setting aside the abatement, even though the relief is not claimed in so many words.

36. Therefore, the objection of the tenants, revisionists that since the petition admittedly stood abated as no Application for bringing the LRs. of the landlord was moved in time and no separate Application for setting aside the abatement was filed, is not tenable in the light of the aforesaid judgements. This prayer was setting aside the abatement, is deemed to be included in the Application under *OXXIII Rule 3 CPC*.

37. The next aspect is whether the respondents were able to explain sufficient cause for condonation of delay.

38. In the case of *Perumon Bhagvathy Devaswom*, (supra), the Apex Court observed that 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 and the type of the case. The words '*sufficient cause*' must be given 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 party.

39. The factors to be considered for determining sufficient cause was explained by the Apex Court in the case of *Ramlal vs. Rewa Coalfields Ltd*, AIR 1962 SC 361 wherein it has observed that while exercising such discretion, there are two considerations which must be kept in mind. The *first consideration* is that the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The *second consideration* which cannot be ignored, is that if sufficient cause for excusing delay is shown, discretion is given to the Court to condone delay and admit the Appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

40. In *Ramlal (Supra)*, it has further been observed that even if sufficient cause has been shown, a party is not entitled to condonation of delay as a matter of right. The proof of *sufficient cause* is a condition precedent for exercise of the discretionary jurisdiction vested in the Court by *Section 5 of the Act, 1963*. If sufficient cause is not proved, nothing further has to be done. The Application for condonation of delay has to be dismissed on this ground alone. If sufficient cause is shown, then the Court has to inquire whether in its discretion, it should condone the delay. This aspect of the



matter introduces consideration of all relevant facts at this stage. The diligence of the party or its *bona fide* may fall for consideration.

41. In the context of *Order XXII Rule 9 of CPC, 1908*, Apex Court in *Balwant Singh (dead) vs. Jagdish Singh and Ors*, (2010) 8 SCC 685 it was noted that at times, the Courts have taken a liberal attitude, while on other occasions, a stricter view has been preferred whenever the explanation has not been found satisfactory. Therefore, there can be no straight-jacket formula which can be uniformly applied to all cases without a reference to the facts and circumstances of the given case. A word of caution was also given that the well-settled canons of interpretative jurisprudence provides that the Courts should not give such interpretation to the provisions as would render them ineffective or odious. Once the provision of *Order XXII of CPC, 1908* has been enacted with particular reference to Rule 9 and the Rules of Act, 1963 have been made applicable to entertain such Applications, these provisions must be given and true and correct meaning must be applied whenever called for. Liberal construction of the expression '*sufficient cause*' is intended to advance substantial justice which itself presupposes no negligence or inaction on the party of the Applicant to whom want of *bona fide* is imputable.

42. It is the sufficiency of the satisfactory explanation and not the length of delay which is decisive for condonation of delay, as has been held in the case of *Perumon Bhagvathy Devaswom*, (supra).

43. **In the light of the aforesaid principles, the facts of the present case now may be considered.**

44. The Application under *Order XXII Rule 3 of CPC, 1908* had been filed after almost one year, when it should have been filed within 90 days.



The explanation given by the Respondents/landlord was that one of the legal heirs was residing outside India and the second legal heir, Shri Rajeev Sobti had died, but his legal heirs had not approached to be the part of the Application for substitution of legal heirs. The reason given was held by the learned Additional Rent Controller to be genuine and sufficient for condonation of delay.

45. It is also pertinent to observe that various dates had been granted by the learned Trial Court for moving the appropriate Application under *Order XXII Rule 3 of CPC, 1908* and had imposed the cost of Rs. 4000/- on the Respondents/landlord *vide* Order dated 26.11.2015 which has been accepted by the Revisionist.

46. Moreover, in the present case, the Application under *Section 5 of the Act, 1963* for condonation of delay had been filed. From the joint reading of this Application along with Application under *Order XXII Rule 3 of CPC, 1908*, the sufficient reasons had been explained for the delay and the same were sufficient for setting aside the abatement of the Respondents/landlord, while allowing the Application for substitution of legal heirs of Late Shri B.K. Sobti.

47. In the present case, even though only the Application under *Order XXII Rule 3 of CPC, 1908* for substitution of legal heirs had been filed on behalf of the Respondents/landlord, but the abatement is set aside by implication.

48. Therefore, it is held that there was no infirmity in the impugned Order dated 15.10.2019 of the learned Additional Rent Controller *vide* which the Application under *Order XXII Rule 3 of CPC, 1908* along with Application under *Section 5 of the Act, 1963* had been allowed by the learned Additional



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Rent Controller.

49. In view of above, there is no merit in the present Revision Petition, which is hereby dismissed along with pending Application(s). The learned Trial Court to proceed with the Trial in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 28, 2024
S.Sharma