2025:DHC:10078

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

% ***Judgment Reserved on: 13.11.2025***
Judgment pronounced on: 17.11.2025

\+ FAO 72/2023

JYOTI PRASAD DECEASED THR LRS .....Appellants

Through: Mr. Radhey Shyam Soni with Mr. Abhijeet Soni, Advocates.

Versus

EAST END ENTERPRISES & ORS. .....Respondents

Through: Mr. Ravi Sabharwal, Advocate for R-3.
Mr. Anil Kumar Batra, Ms. Shashi Bala and Mr. Dhuruv Kumar, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. The present appeal arises out of the order dated 01.12.2022passed by the Additional District Judge, Shahdara, Karkardooma Courts, in **Civil Suit No. 189/2013** titled as "**Jyoti Prasad v. East End Enterprises & Ors**.",

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whereby the appellants' application under Section 5 of the Limitation Act, 1963 (the Act) seeking condonation of delay, and the accompanying application under Order XXII Rules 3 and 9 read with Section 151 of the Civil Procedure Code, 1908 (the CPC) seeking setting aside of abatement and substitution of legal representatives (LRs) were dismissed.

2. The suit was instituted in 2013 by late Shri Jyoti Prasad, the plaintiff, relating to the death of his son, daughter-in-law, and their two minor children. The family died in an incident involving gas leakage shortly after the delivery of an LPG cylinder. Compensation was claimed on the premise that the deaths were attributable to negligence on the part of the respondents.

3. During the pendency of the suit, on 19.11.2016 the sole plaintiff, passed away on 19.11.2016, leaving behind two legal heirs—Jagroshan Verma (son) and Beena Verma (daughter), who are the appellants herein.

4. No application for substitution of LRs was filed within the period prescribed under Order XXII CPC. Consequently, vide order dated 25.04.2019, the trial court recorded that the suit stood abated on account of non-filing of an application for bringing the LRs on record.

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5. The appellants thereafter on 20.07.2019, filed an application under Order XXII Rules 3 and 9 CPC seeking setting aside of the abatement and permission to be substituted as plaintiffs. Alongside, an application under Section 5 of the Limitation Act was filed seeking condonation of delay of approximately 2 years and 2 months.

6. The trial court, *vide* the impugned order, held that the explanation offered for the delay was vague, unsupported by materials, and insufficient, and therefore declined to condone the delay. As a result, the application under Order XXII was also rejected. Aggrieved, the appellants have preferred the present appeal.

7. The learned counsel for the appellants submitted that the deceased plaintiff, who was more than 90 years of age at the time of his death, had been residing separately from the appellants and he lost memory a few months prior to his demise. It was urged that owing to old age and deteriorating mental condition, the deceased plaintiff did not inform his counsel or his family members about the pendency of the suit.

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7.1 It was also contended that the appellants were unaware of the existence of the proceedings until **25.04.2019**, when they were informed of the case by a close friend of the deceased plaintiff.

7.2 The learned counsel would also argue that the delay in filing the substitution application was neither deliberate nor intentional, but occurred due to circumstances beyond the control of the appellants and asserted that the trial court failed to appreciate the *bona fide* nature of the explanation and adopted an unduly technical approach.

7.3 It was further submitted that the trial court erred in holding that the appellants had not furnished supporting documents regarding the mental condition of the deceased plaintiff or the details of the person who had disclosed the pendency of the proceedings. According to the appellants, such requirements were not mandatory and the explanation provided was sufficient to constitute "sufficient cause" under Section 5 of the Act.

7.4 The appellants contended that they had a *prima facie* meritorious case and that dismissal of the applications on technical

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grounds has resulted in grave miscarriage of justice. It was submitted that no prejudice would be caused to the respondents if the delay was condoned and the matter was adjudicated on merits.

8. The learned counsel for the respondents, on the other hand, supported the impugned order and submitted that the explanations offered by the appellants were wholly untenable. It was argued that the plea of "loss of memory" was not supported by any medical document, and that the story of having learnt about the suit from an unnamed friend was vague and unreliable.

8.1 It was further pointed out that despite the death of the plaintiff in November 2016, the counsel for the plaintiff continued to appear before the trial court and even conducted trialuntil **25.04.2019**, thereby indicating that the case was being pursued and could not have been unknown to the family.

8.2 The learned counsel for the respondent would then contend that the addresses of the appellants show that they were residing in close proximity to the deceased, and therefore the plea of lack of knowledge

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was not believable. The delay of more than two years remained unexplained and was a result of sheer negligence and inaction.

8.3 It was further argued that even otherwise, the appellants were not beneficiaries under Section 1A of the **Fatal Accidents Act, 1855**, as they were neither dependents nor persons entitled to compensation for the deaths forming the subject matter of the suit.

8.4 On these grounds, the learned counsel submitted that the trial court rightly refused to condone the delay and rejected the applications, and therefore the present appeal deserves dismissal.

9. Having considered the rival submissions and perused the record, it is evident that the material facts are largely undisputed. The sole plaintiff passed away on 19.11.2016; no steps were taken for substitution within the prescribed period; and the application for setting aside abatement was filed only on 20.07.2019. The delay of approximately two years and two months, therefore, required the appellants to satisfy the requirement of "sufficient cause" both under Section 5 of the Limitation Act and Order XXII Rule 9 of the CPC.

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10. The explanation offered by the appellants rests on the assertion that the deceased plaintiff had lost his memory shortly before his demise and was residing separately, due to which he could neither pursue the proceedings nor inform the appellants about the pending litigation. However, apart from a bare assertion, there is no material(s) on record to substantiate the alleged medical condition of the deceased. No medical certificate, prescription, or contemporaneous record indicating cognitive decline was placed before the trial court or before this Court. In the absence of even minimal corroboration, the plea remains unsubstantiated.

11. In contrast, the record of the trial court reflects that even after the demise of the plaintiff, his counsel continued to appear, move applications and conduct trial till 25.04.2019. Such continued representation is inconsistent with the appellants' assertion that neither the deceased plaintiff nor his family nor the counsel was aware of the proceedings. If the plaintiff had indeed stopped communicating because of memory loss, it is inexplicable how the counsel continued to participate effectively in the matter for more than two years thereafter. This circumstance strongly dents the credibility of the explanation offered.

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12. The further assertion that the appellants came to know of the proceedings only from a "close friend" of the deceased also lacks specificity and reliability. No name, address or particulars of such friend were disclosed. The averment, therefore, remained vague.

13. The addresses of the appellants, as noted by the trial court, also assume relevance. The daughter was residing in the same block and the son in close proximity to the deceased. In these circumstances, the assertion that the appellants remained unaware of the pendency of litigation instituted by their own father for over five years does not inspire confidence. A litigant's family cannot remain in absolute ignorance of a long-standing civil suit, particularly when the matter was being regularly prosecuted by counsel.

14. The law on condonation of delay is well settled. While the expression "sufficient cause" must receive a liberal construction, such liberality is not available to a litigant who has acted with negligence, lack of diligence or want of *bona fides*. Judicial discretion cannot be exercised in favour of a party whose explanation is vague, unsupported by material or inconsistent with the contemporaneous record. Delay defeats equity, and a party who

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sleeps over his rights for years cannot claim indulgence merely on the basis of broad assertions unaccompanied by proof.

15. Tested on these parameters, the explanation offered by the appellants falls short of the statutory requirement. The delay is substantial; the reasons assigned are uncorroborated; and the conduct reflected from the record does not establish diligence. There is no material showing that the appellants were prevented by circumstances beyond their control from taking timely steps for substitution. The trial court was, therefore, justified in holding that no sufficient cause had been shown.

16. In these circumstances, once the appellants failed to establish sufficient cause for condoning the delay under Section 5 of the Limitation Act, the application under Order XXII Rules 3 and 9 CPC could not have been considered on merits. The statutory scheme is clear that where a party dies and the prescribed period for substitution expires, abatement operates automatically, and revival of the proceedings becomes possible only if the delay is first condoned. Without such condonation, the Court is divested of jurisdiction to entertain an application for setting aside abatement. The

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dismissal of the delay application therefore rendered the request for setting aside abatement infructuous in law. Even otherwise, the appellants' averments did not disclose any compelling or *bona fide* reason to revive the suit more than two years after abatement. The trial court accordingly acted correctly in rejecting the application under Order XXII Rules 3 and 9 CPC.

17. Furthermore, the claim in the suit was traceable to the Fatal Accidents Act, 1855, which constitutes the general statutory framework governing compensation for accidental deaths where no special legislation regulates the nature of the accident—such as the present case involving a gas-leak incident. Under Section 1A of the said Act, the right to sue is confined to the wife, husband, parents and children of the deceased whose death forms the cause of action. The appellants do not fall within this category, nor were they dependents of the persons whose death formed the subject matter of the suit. Thus, irrespective of the delay, the appellants had no statutory right to be substituted as plaintiffs, and the proceedings could not have continued at their instance.

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18. In view of the above discussion, this Court finds no infirmity in the impugned order dated 01.12.2022. Hence, no interference is called for.

19. The appeal, is therefore dismissed.

CHANDRASEKHARAN SUDHA
(JUDGE)

NOVEMBER 17, 2025
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