

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
AT NEW DELHI

CONSUMER COMPLAINT NO. 697 OF 2018

WITH

IA No. 18591 of 2019

(For Bringing LR's of Complainant on Record)

AND

IA No. 19644 of 2019

(Condonation of Delay in filing IA 18591 / 2019)

O.P. Mehta & Ors.

... Complainants

Versus

DLF Homes Rajapura Pvt. Ltd.

... Opposite Party

**BEFORE:**

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT**

**HON'BLE DR. S. M. KANTIKAR, MEMBER**

**HON'BLE MR. BINOY KUMAR, MEMBER**

For the Complainants : Mr. Chandrachur Bhattacharyya, Advocate  
Mr. Manoj Kumar Dubey, Advocate

For the Opposite Party : Mr. Pravin Bahadur, Advocate  
Mr. Prabhat Ranjan, Advocate

**ORDER**

**PRONOUNCED ON 18<sup>th</sup> APRIL 2022**

**R.K. AGRAWAL, J., PRESIDENT**

**IA No. 18591 of 2019**

1. The present Consumer Complaint was instituted by Mr. O.P. Mehta (Complainant No. 1) and Mr. Siddharth Wadia (Complaint No. 2) against Opposite Party, M/s. DLF Homes Rajapura Pvt. Ltd.



Certified To be True Copy

Section Officer  
National Consumer Disputes  
Redressal Commission  
New Delhi-110023

2. . . During the course of arguments on 19.07.2019 when it was transpired that Late Mr. O.P. Mehta, Complainant No.1 had expired, this Commission directed the Complainants to take steps for bringing on record the Legal Representatives of Complainant No.1. In compliance of the Order dated 19.07.2019, the present Application has been moved for bringing the Legal Representatives of Late Shri O.P. Mehta, i.e., Wife – Mrs. Uma Mehta, Son – Dr. Vinay Mehta, Mrs. Leena Goswami and Dr. Sonia Arora, daughters of Late Shri O.P. Mehta, on record.

**IA No. 19644 / 2019**

3. The Complainant No. 1, Late Mr. O.P. Mehta, had expired on 31.03.2018 and the I.A. No. 18651 / 2019 for bringing on record the LRs of O.P. Mehta, had been filed on 27.11.2019. For condonation of delay in filing the IA No. 18651 / 2019, Application IA No. 19644 / 2019 has also been filed by the Complainants, in which it has been stated that while the 1<sup>st</sup> Class Legal Heirs of the deceased, i.e., Son- Mr. Vinay Mehta and Wife Uma Mehta are staying in Delhi, but his daughters Mrs. Leena Goswami and Dr. Sonia Arora are staying outside Delhi, therefore, it took some time to coordinate and obtain the requisite documents and the Affidavits. It was also stated that the delay was not intentional and it was prayed that the delay in filing the Application be condoned.



4. Mr. Chandrachur Bhattacharyya, learned counsel appearing on behalf of the Complainants relied upon Judgments passed by the Hon'ble Supreme Court in '*Dhurandhar Prasad Singh vs. Jai Prakash University & Ors.*' (2001) 6 SCC 534 and '*Mithailal Dalsangar Singh and Others vs. Annabai Devram Kini & Ors.*' (2003) 10 SCC 691.

5. *Per Contra*, Mr. Praving Bahadur, learned Counsel for the Opposite Party/Non-Applicant contested the Applications filed by the Complainants. It was submitted that although the Complainant No. 1, late Mr. O.P. Mehta, expired on 31.03.2018 yet the Complainants filed Application for bringing on record the LRs of Complainant No.1 only on 28.11.2019, i.e. with an inordinate delay of 607 days and that too after giving direction by this Commission vide Order dated 19.07.2019.

6. It was further submitted that Article 120 of the Schedule of Limitation Act provides that the Legal Representatives of a deceased plaintiff or appellant or of deceased respondent may be made parties within 90 days of the death of the concerned party. It is thus manifest that if steps are not taken within 90 days of the death, then the suit or the Appeal abates. In the present case, the Application has been moved with a delay of 607 days, resultantly, by virtue of Order XXII Rule 3(2) of the CPC read with Article 120 of the Limitation Act, 1963, no right to sue survives on behalf of the



Complainants. In support of his contentions he relied upon judgments passed by the Hon'ble Supreme Court in '*Budh Ram and others vs. Bansi and Ors.*' (2010) 11 SCC 476; *Gurnam Singh (dead) through LRs and Ors. Vs. Gurbachan Kaur (dead) through LRs*" (2017) 13 SCC 414. It was prayed that both the applications be dismissed.

7. We have heard Mr. Chandrachur Bhattacharyya, learned Counsel for the Complainants, Mr. Pravin Bahadur, learned Counsel for the Opposite Party; perused the material available on record and have given a thoughtful consideration to the various pleas raised by the respective Parties.

8. For the reasons stated in IA No. 19644 / 2019, the delay in filing the IA No. 18591 / 2019, i.e., Application for bringing on record the LRs of Complainant No. 1, is condoned and the IA No. 18591 / 2019 is treated to have been filed within time.

9. The Hon'ble Supreme Court in "*Shri Rinku Dev. Chela Bawa Harjug Dass vs. Som Dass (Deceased) through his Chela Shiam Das , (1976) 1 SCC 103*" has held that *Order 22, Rule 10, C.P.C. is based on the principle that trial of a suit cannot be brought to an end merely because the interest of a party in the subject matter of the suit had been devolved upon another during the pendency of the suit but that suit may be continued against the person acquiring the interest with the leave of the Court. When a suit is*



*brought by or against a person in a representative capacity and there is a devolution of the interest of the representative, the rule that has to be applied is Order 22, rule 10 and not Rule 3 or 4, whether the devolution takes place as a consequence of death or for any other reason, by observing as under:-*

***“8. This rule is based on the principle that trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during the pendency of the suit but that suit may be continued against the person acquiring the interest with the leave of the Court. When a suit is brought by or against a person in a representative capacity and there is a devolution of the interest of the representative, the rule that has to be applied is Order 22 Rule 10 and not Rule 3 or 4, whether the devolution takes place as a consequence of death or for any other reason. Order 22 Rule 10 is not confined to devolution of interest of a party by death; it also applies if the head of the mutt or manager of the temple resigns his office or is removed from office. In such a case the successor to the head of the mutt or to the manager of the temple may be substituted as a party under this rule. The word “interest” which is mentioned in this rule means interest in the property i.e. the subject-matter of the suit and the interest is the interest of the person who was the party to the suit.***

***9. It was, however, contended on behalf of the respondent that there was no devolution of the interest in the subject-matter of the suit on the death of Som Dass, since there was no certainty as to the person who would be elected as mahant to succeed him. The argument was that it was uncertain on the death of Som Dass as to who would become the mahant by election, that it was only when a person succeeded to the mahantship on the death of a previous mahant by virtue of law***



**or custom that there would be devolution of interest in the subject-matter of the suit and, therefore, Order 22 Rule 10, would not be attracted. We see no force in this argument. We are of the view that devolution of the interest in the subject-matter of the suit took place when Shiam Dass was elected as mahant of the Dera after the death of Som Dass."**

10. The Hon'ble Supreme Court in '**Dhurandhar Prasad Singh v. Jai Prakash University, (2001) 6 SCC 534 : 2001 SCC OnLine SC 842 at page 549**' has held that prayer for leave can be made not only by the person upon whom interest has devolved, but also by the plaintiff or any other party or person interested, by observing as under:-

**"26. The plain language of Rule 10 referred to above does not suggest that leave can be sought by that person alone upon whom the interest has devolved. It simply says that the suit may be continued by the person upon whom such an interest has devolved and this applies in a case where the interest of the plaintiff has devolved. Likewise, in a case where interest of the defendant has devolved, the suit may be continued against such a person upon whom interest has devolved, but in either eventuality, for continuance of the suit against the persons upon whom the interest has devolved during the pendency of the suit, leave of the court has to be obtained. If it is laid down that leave can be obtained by that person alone upon whom interest of a party to the suit has devolved during its pendency, then there may be preposterous results as such a party might not be knowing about the litigation and consequently not feasible for him to apply for leave and if a duty is cast upon him then in such an eventuality he would be bound by the decree even in cases of failure to apply for leave. As a rule of prudence, initial duty lies upon the plaintiff to apply for leave in case the factum of devolution**



**was within his knowledge or with due diligence could have been known by him. The person upon whom the interest has devolved may also apply for such a leave so that his interest may be properly represented as the original party, if it ceased to have an interest in the subject-matter of dispute by virtue of devolution of interest upon another person, may not take interest therein, in ordinary course, which is but natural, or by colluding with the other side. If the submission of Shri Mishra is accepted, a party upon whom interest has devolved, upon his failure to apply for leave, would be deprived from challenging correctness of the decree by filing a properly constituted suit on the ground that the original party having lost interest in the subject of dispute, did not properly prosecute or defend the litigation or, in doing so, colluded with the adversary. Any other party, in our view, may also seek leave as, for example, where the plaintiff filed a suit for partition and during its pendency he gifted away his undivided interest in the Mitakshara coparcenary in favour of the contesting defendant, in that event the contesting defendant upon whom the interest of the original plaintiff has devolved has no cause of action to prosecute the suit, but if there is any other co-sharer who is supporting the plaintiff, he may have a cause of action to continue with the suit by getting himself transposed to the category of plaintiff as it is well settled that in a partition suit every defendant is a plaintiff, provided he has cause of action for seeking partition. Thus, we do not find any substance in this submission of learned counsel appearing on behalf of the appellant and hold that prayer for leave can be made not only by the person upon whom interest has devolved, but also by the plaintiff or any other party or person interested."**

11. The Hon'ble Supreme Court in "**Mithailal Dalsangar Singh v. Annabai Devram Kini, (2003) 10 SCC 691 : 2003 SCC OnLine SC 1013** at



page 696" has held that '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, by observing 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. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of "sufficient cause" within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction.*

*10. In the present case, the learned trial Judge found sufficient cause for condonation of delay in moving the application and such finding having been reasonably arrived at and based on the material available, was not open for interference by the Division Bench. In fact, the Division Bench has not even reversed that finding; rather the Division Bench has proceeded on the reasoning that the suit filed by three plaintiffs having abated in its entirety by reason of the death of one of the plaintiffs, and then the fact that no prayer was made by the two surviving plaintiffs as also by the legal representatives of the deceased plaintiff for setting aside of the abatement in its entirety, the suit could not have been revived. In our opinion, 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."**

12. Respectfully following the principles laid down by the Hon'ble Supreme Court in "**Shri Rinku Dev. Chela Bawa Harjug Dass vs. Som Dass (Deceased) through his Chela Shiam Das (supra)**" "**Dhurandhar Prasad Singh v. Jai Prakash University (supra)** and "**Mithailal Dalsangar Singh v. Annabai Devram Kini (supra)**, IA No. 18591 / 2019, i.e., Application for bringing on record the Legal Representatives of Complainant No. 1, Late Mr. O.P. Mehta, is allowed and the Amended Memo of Parties filed alongwith the Application is taken on record.

13. List on 25.05.2022 for further directions.



Sd/-

( R.K. AGRAWAL, J. )  
PRESIDENT

Sd/-

( DR.-S. M. KANTIKAR )  
MEMBER

Sd/-

( BINOY KUMAR )  
MEMBER

/RS

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