$~ (Appellate)

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

Reserved on : 7th July, 2022
Pronounced on: 11th July, 2022

\+ CM(M) 574/2022, CM 27502/2022 (exemption), CM 27501/2022 (stay) and CM 29443/2022 (stay)

DLF HOMES RAJAPURA PVT. LTD ..... Petitioner
Through: Ms. Kanika Agnihotri, Ms. Sonia Dhamija, Ms. Shweta Priyadarshni, Ms. Seema Sundd, Mr. Prabhat Ranjan, Mr. Alabhya Dhamija and Mr. Drouhn Garg, Advs.

Versus

LATE O.P. MEHTA & ANR. ..... Respondents
Through: Mr. Chandrachur Bhattacharya, Mr. Manoj Kumar Dubey and Ms. Divya, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% J U D G M E N T
11.07.2022

Factual Backdrop

1. Consumer Case No. 697/2018 was preferred by O.P. Mehta and Siddharth Wadia, the respondents herein, against the petitioner DLF Homes Rajapura Pvt Ltd, before the learned National Consumer Disputes Redressal Commission ("the learned NCDRC") under

Section 12(1)(c)[1] read with Section 13(6)[2] of the Consumer Protection Act, 1986 ("the Act", hereinafter) read with Order I Rule 8[3] of the Code of Civil Procedure, 1908 (CPC).

2. Consumer Case No. 697/2018 would be referred to, hereinafter, as "the complaint".

3. Consumer Case No. 697/2018 was filed as a "joint consumer complaint", and was stated to have been "preferred in a representative capacity …. for the benefit of entire class of persons having the same interest", before the learned NCDRC. The consumers purportedly having the same interest, whom the respondents sought to represent, were investors in the 'Maiden Heights' housing project of the petitioner at Bangalore. The complaint averred that Clause 9.3(a) of

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[1] **12. Manner in which complaint shall be made.** –
(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by –
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(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested;"

[2] **13. Procedure on admission of complaint**. –
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(6) Where the complainant is a consumer referred to in sub-clause (*iv*) of clause (*b*) of sub-section (1) of Section 2, the provisions of Rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

[3] The relevant clauses of Order I Rule 8 read thus:
"**8. One person may sue or defend on behalf of all in same interest**. –
(1) Where there are numerous persons having the same interest in one suit,-
(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;
(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.
(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct."

the Flat Buyers Agreement, executed between the petitioner and each of the subscribers/investors in the project, required the petitioner to hand over, to the investors, possession of the flats in the project within 60 days from the date of their application. Qua Respondents 1 and 2, for example, the complaint alleged that, though the flats were required to be handed over on 13th April 2014 and 24th May 2014 respectively. Instead, highly belated final demand notes were issued; to Respondent 1 on 19th December 2016 and to Respondent 2 on 7th June 2016. This, it was alleged, had breached the Flat Buyers Agreement. Possession of the flats, it was asserted, was required to be handed over on 13th April 2014. Possession of the flats was offered to the investors much later, but, even then, the complaint alleged that the flats were not in habitable condition, and several facilities and amenities, which were required to be provided in the flats, including permanent electricity and water connection, were absent.

4. For these reasons, the complaint sought a direction to the petitioner to refund, to the respondents and other flat buyers having the same interest, the amounts deposited by them with the petitioner along with interest thereon @ 18% per annum from the date of deposit till the date of actual refund. Additionally, damages of ₹ 10 lakhs to each investor and costs of the complaint were also claimed.

5. The complaint was accompanied by an application under Section 12(1)(c) of the Act, for permission to the respondents to file a consumer complaint in representative capacity, representing the interest of all the investors in the project. Permission, as sought, is yet

to be granted by the learned NCDRC.

6. The impugned order, dated 18th April 2022, was passed before arguments were heard on the application of the respondents under Section 12(1)(c) of the Act. As such, this judgement examines the sustainability of the impugned order *when permission to file a joint application was yet to be granted under Section 12(1)(c)*. The Court is, therefore, considering whether the learned NCDRC could have passed the impugned order dated 18th April 2022 *at that stage*.

7. On 19th July 2019, the learned NCDRC noted that, during the course of the proceedings before it in connection with the aforesaid complaint, Respondent 1 O.P. Mehta expired. Accordingly, the learned NCDRC directed the respondents to take steps to bring the legal representatives of Respondent 1 on record, by filing the requisite application within one week.

8. IA 18591/2019, for bringing on record the legal representatives of Respondent 1 came to be filed by the respondents on 27th November 2019.

9. On 4th December 2019, the learned NCDRC noted that IA 18591/2019 did not disclose the date of death of Respondent 1 O.P. Mehta and was also not supported by any Death Certificate. The application was, therefore, directed to be renotified on 9th April 2020. The respondents were directed to file a supplementary affidavit disclosing the date of death of Respondent 1 O.P, Mehta and also to

annex his Death Certificate. Additionally, an application for condonation of delay in filing IA 18591/2019 was also directed to be filed at the earliest. The delay, it is relevant to note, was admittedly of 607 days.

10. On or around 18th December 2019, the respondents filed IA 19644/2019 seeking condonation of the delay in filing IA 18591/2019. The reason for delay, as advanced in the said application, are to be found in paras 5 and 6 thereof, which read thus:

> "5. That there was a delay in bringing on record the legal heirs of late Shri OP Mehta since the surviving class 1 legal heirs of the deceased late Shri O P Mehta, i.e. his son Vinay Mehta, wife Uma Mehta who are staying in Delhi, but his daughters Mrs Leena Goswaml and Dr Sonia Arora are staying outside Delhi.
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> 6. Therefore it took some to co-ordinate and obtain the requite documents and the affidavits and the copies of passport from each of the legal heirs. The said delay is not intentional and may kindly be condoned. The same as not moved before since the complaint has not been admitted as a class action yet."

11. It may be noted that the delay in filing IA 18591/2019 was of 607 days. The petitioner also filed before the learned NCDRC, IA 3063/2021 under Order XXII Rule 3(2) of the CPC[4], for termination of proceedings in relation to Consumer Case No. 697/2018, as having

[4] **3. Procedure in case of death of one of several plaintiffs or of sole plaintiff. –**
(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

abated on the expiry of one week from the passing of the order dated 19th July 2019 (*supra*) by the learned NCDRC, whereby the respondents were directed to file the application for impleadment of the legal representatives of Respondent 1 O.P. Mehta within one week. The said application not having been filed within one week, i.e. by 26th July 2019, IA 3063/2021 asserted that the complaint had abated. No application for setting the abatement having been filed by the respondents, the application sought termination of the proceedings relating to Consumer Case 697/2018, as having abated by application of Order XXII Rule 3(2) of the CPC.

12. Though formal orders on the aforesaid IA 3063/23021 are yet to be passed by the learned NCDRC, the impugned order dated 18th April 2022 effectively addresses the said application, as well as the contentions and prayers contained therein.

Rival Contentions before the learned NCDRC

13. Before the learned NCDRC, the petitioner contended that by operation of Order II Rule 3(2) of the CPC, on the expiry of 60 days from the death of Respondent 1 O.P. Mehta or, at the latest, on 26th July 2019, when the period of one week for filing the application for substitution of legal representatives, granted by the learned NCDRC, had expired, the complaint filed by the respondents stood abated by operation of Order XXII Rule 3(2) of the CPC. In order to revive the proceedings, an application to set aside the abatement was required to

be filed under Order XXII Rule 9(2)[5] of the CPC. The period for filing such application, as per Article 121 of the Limitation Act, 1977, was 60 days from the date of abatement. No application for setting aside the abatement of the complaint had ever been filed; accordingly, the petitioner submitted, before the learned NCDRC, that the proceedings stood concluded and the belated application for filing of substitution of legal heirs of Respondent 1 O.P. Mehta could not resuscitate it.

14. Without prejudice, it was contended that, even otherwise, IA 18591/2019 for substitution of the legal representatives of Respondent 1 had been filed after a delay of 607 days, and no sufficient cause explaining such delay was to be found in IA 19644/2020, which sought condonation thereof. IA 19644/2020, therefore, it was submitted, deserved to be dismissed and consequently, IA 18591/2019 would also not survive for consideration. The petitioner relied, in support of the aforesaid contentions, on the decisions in ***Budh Ram v. Bansi***[6] and ***Gurnam Singh v. Gurbachan Kaur***[7]**.**

15. The respondents sought to contest the aforesaid assertions of the petitioner as advanced before the learned NCDRC by relying on the

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[5] **9. Effect of abatement or dismissal**. –

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(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 of dismissal upon such terms as to costs or otherwise as it thinks fit.

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

[6] **(2010) 11 SCC 476**

[7] **(2017) 13 SCC 414**

decision in ***Dhurandhar Prasad Singh v. Jai Prakash University***[8] and ***Mithailal Dalsangar Singh v. Annabai Devram Kini***[9]**.**

The Impugned Order

16. The learned NCDRC rejected both the contentions of petitioner. Resultantly, the delay in filing the application for substitution of legal representatives was condoned and the substitution of legal representatives of Respondent 1 O.P. Mehta was permitted. IA 18591/2019 and IA 19644/2019 were both, therefore, allowed. In so deciding, the learned NCDRC relied upon the judgments in ***Shri Rikhu Dev Chela Bawa Harjug Dass v. Som Dass***[10], ***Dhurandhar Prasad Singh***[8] and ***Mithailal Dalsangar Singh***[9].

17. Aggrieved, by the aforesaid decision of the learned NCDRC, the respondent before the learned NCDRC, has petitioned this Court under Article 227 of the Constitution of India.

Rival contentions before this Court

18. Detailed arguments were advanced on behalf of the petitioner by Ms. Kanika Agnihotri and on behalf of the respondents by Mr. Chandrachur Bhattacharya, learned Counsel.

19. Ms. Agnihotri submitted that the decisions, on which the

[8] **(2001) 6 SCC 534**
[9] **(2003) 10 SCC 691**
[10] **(1976) 1 SCC 103**

learned NCDRC relied, could not be regarded as authorities for the proposition that, once a complaint had abated on account of the death of one of several complainants, the requirement of filing of a formal application to set aside abatement could be done away with and that an application to substitute the legal heirs of the deceased plaintiff would suffice in its place.

20. ***Mithailal Dalsangar Singh***[9], she submits, emanated from a suit filed by three plaintiffs, one of whom died. The suit, therefore, abated. The legal representative of the deceased plaintiff moved an application for setting aside abatement within time, which was allowed. The issue before the Supreme Court was whether, as no application for setting aside abatement had been filed by either of the remaining two plaintiffs, who were alive, the suit could be treated as continuing to stand abated. This, she submits, cannot be equated with a situation in which no application for abatement, even by the legal representatives of the deceased complainant (as in the present case) was filed. ***Mithailal Dalsangar Singh***[9]**,** she submits, therefore, turned on its own facts, which were clearly distinguishable from those in the present case.

21. She also relies on the decision in ***Madan Naik v. Hansubala Devi***[11] to contend that a specific order under Order XXII Rule 9 of the CPC, setting aside the abatement, was necessary. This, too, according to her, underscores the position that abatement of proceedings, once it has taken place by operation of law, can be

[11] **(1983) 3 SCC 15**

extinguished, and the proceedings can be revived only if a formal application to set aside abatement is moved and a formal order setting aside abatement is passed. Neither of these eventualities has come to pass in the present case. Accordingly, Ms. Agnihotri submits that there could be no question of allowing the application, by the respondents, seeking to substitute the legal representatives of the deceased Respondent 1.

22. Ms. Agnihotri further submits that the decision of the learned NCDRC, insofar as it condones the unconscionable delay in filing the application for substitution of legal representatives of Respondent 1, is also laconic. She submits that a bare reading of the application for condonation of delay would reveal that there were no substantial grounds justifying such condonation, especially considering the extent of delay. The decision to condone delay, as contained in the impugned order passed by the learned NCDRC is, she submits, non-speaking in nature. Even for that reason, she submits that impugned order cannot sustain on facts or in law.

23. To support her contention that the delay in moving an application seeking setting aside abatement of proceedings, once the proceedings stand abated, requires to be properly explained with sufficient reasons, Ms. Agnihotri relies on ***Balwant Singh v. Jagdish Singh***[12] and ***U.O.I. v. Ram Charan***[13].

[12] **(2010) 8 SCC 685**

[13] **AIR 1964, SC 215**

24. Responding to the submissions of Ms. Agnihotri, Mr. Bhattacharya, at the very outset, submits, relying on ***Mohd. Shafeeq v. Mirza Mohd. Hussain***[14] that an order condoning delay is, by its very nature, discretionary, and is impervious to interference under Article 227 of the Constitution of India.

25. On merits, too, submits Mr. Bhattacharya, no cause for interference with the decision of the learned NCDRC to allow the application for substitution of legal heirs can be said to exist, as the decisions in ***Mithailal Dalsangar Singh***[9]**,** ***Dhurandhar Prasad Singh***[8] and ***Rikhu Dev***[10]**,** on which, the learned NCDRC relied, squarely apply.

26. On the aspect of condonation of delay, Mr. Bhattacharya submits that, in fact, no delay in preferring the application for substitution of legal heirs can be said to exist at all, as the petitioner had filed Consumer Case No. 697/2018 in a representative capacity, under Section 12(1)(c) of the Act. Where a proceeding is filed in a representative capacity, he submits that Order XXII Rules 3 and 4 of the CPC are not applicable. Rather, the provision which applies is Order XXII Rule 10 of the CPC. This position of law, submits Mr. Bhattacharya, stands settled by the judgment of the Supreme Court in ***Rikhu Dev***[10] which, in para 8 of the report, holds that "when a suit is brought by or against a person in a representative capacity and there is devolution of the interest of the representative, the Rule that has to be applied is Order XXII Rule 10 and not Rules 3 or 4, whether the

[14] **(2002) 9 SCC 460**

devolution takes place as a consequence of death or for any other reason".

27. To a query from the Court, as to whether, this ratio would apply even before the application under Section 12(1)(c) of the Act, allowing Consumer Case No. 697/2018 to be filed in a representative capacity, was allowed by the learned NCDRC, Mr. Bhattacharya answers in the affirmative, relying, for the purpose, on the word "brought", as implied by the Supreme Court in ***Rikhu Dev***[10]. He submits that, while examining whether the provision/provisions which applies is/are Rules 3 and 4 of Order XXII of the CPC or Rule 10 of Order XXII of the CPC, what is to be seen whether the suit is "brought" in a representative capacity. "Brought", submits Mr Bhattacharya, means "taken" or "carried". Relying on this etymological understanding of the word "brought", Mr. Bhattacharya equates "bringing" of the suit with "filing" thereof. As such, once Consumer Case No. 697/2018 had been filed in the learned NCDRC, Mr. Bhattacharya submits that, *ipso facto*, it had been "brought". I may observe, here, that, as the word "brought" is not a term of art but one of common usage, there can hardly be any dispute regarding its meaning, scope or ambit.

28. The same principle, submits Mr. Bhattacharya, emerges from the decision in ***Dhurandhar Prasad Singh***[8]. To support his submissions Mr. Bhattacharya has placed reliance on Section 12(1)(c) read with Section 13(6) and Section 2(1)(b)(iv)[15] of the Act and Order

[15] **2. Definitions**. –

I Rule 8 of the CPC.

29. Mr. Bhattacharya also relied on the judgments of the Supreme Court in ***Anjum Hussain v Intellicity Business Park Pvt Ltd***[16] and the order dated 8th August 2017 of the Supreme Court in ***Manoj Verma v. Jaipuria Infrastructure Developers Pvt Ltd***[17], as well as the judgment dated 22nd April 2019 of the learned NCDRC in ***Manmeet Kunwar v. Vahe Project Pvt Ltd***[18], which stood affirmed by the Supreme Court *vide* order dated 2nd July 2019 in ***Vahe Project Pvt Ltd v. Manmeet Kunwar***[19] to submit that the complaint was maintainable in a representative capacity under Section 12(1)(c) of the Act. However, I do not propose to enter into the aspect of the merits of the application filed by the respondents under Section 12(1)(c) of the Act, as the learned NCDRC is presently *in seisin* of the application.

30. I may note that Ms. Agnihotri, too, did not seriously contest the said application before this Court, as the orders stand reserved before the learned NCDRC thereon. Her contention is that, the impugned order having been passed at a stage when the application of the respondents under Section 12(1)(c) of the Act had not even been heard, it was not open to the respondents to urge that, as the consumer complaint had been brought in a representative capacity, Order XXII

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(1) In this Act, unless the context otherwise requires,—

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(*b*) "complainant" means –

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(iv) one or more consumers, where there are numerous consumers having the same interest;

[16] (**2019) 6 SCC 519**
[17] **Civil Appeal 338/2017**
[18] **Consumer Case 2022/2018**
[19] **Civil Appeal 5099/2019**

Rules 3 and 4 of the CPC would not apply. She submits that a mere averment in the complaint that it was being filed in a representative capacity would not suffice for the Court to treat as having been brought in that capacity. She also pointed out that the complaint even on its face, claimed to have been filed as a joint complaint and not as a complaint in representative capacity.

Analysis

31. From the submissions advanced by Ms. Agnihotri, the issues which arise for consideration may be identified as

(i) whether the consumer complaint case filed by the respondents had abated, no formal application for substitution of the legal heirs of Respondent 1 having been preferred within the time stipulated in that regard (which would also involve the issue of whether Order XXII Rules 3 and 4 of the CPC were applicable in the present case),

(ii) if so, whether IA 18591/2019, for substitution of the legal representatives of the deceased Respondent 1, could suffice and be treated as an application for setting aside the abatement of the complaint, and

(iii) whether the decision of the learned NCDRC to condone the delay in filing IA 18591/2019, to bring the legal representatives of the deceased Respondent 1 on record, and, thereby, to allow IA 19644/2019, can sustain.

Needless to say, all these issues have to be addressed keeping in mind the parameters of the jurisdiction vested in this Court by Article 227 of

the Constitution of India, the present petition having been preferred under the said provision.

32. Having heard learned Counsel for the parties at length and having perused the record and the judicial authorities cited at the Bar, I am of the considered opinion that, while issues (i) and (ii) have to be answered in favour of the respondents and against the petitioner, issue (iii) deserves to be answered in favour of the petitioner and against the respondents. The consequence, needless to say, would be that the impugned order would be liable to be set aside.

33. I proceed to address the three specific issues which arise for consideration, individually, thus:

Re: Issues (i) and (ii)

34. Ms. Agnihotri's initial contention is that, by operation of Order XXII Rule 3, the complaint filed by the respondents abated, consequent on the failure of the respondent to file an application to substitute the legal representatives of the deceased Respondent 1 on or before 26th July 2019, being the date on which the said application was required to be filed, as directed by order dated 23rd July 2019 of the learned NCDRC.

35. As against this, Mr. Bhattacharya submits, relying on ***Rikhu Dev***[10] and ***Dhurandhar Prasad Singh***[8] that, Order XXII Rule 3 of the

CPC does not apply in the facts of the present case, as the consumer complaint had been brought by his client in a representative capacity.

36. The application of Order XXII, in the event of the death of a complainant during pendency of proceedings before the learned NCDRC, cannot be questioned, in view of Section 13(7) of the Consumer Protection Act, which expressly renders the provision applicable.

37. The question, then, is whether, of the various Rules under Order XXII of the CPC, Rules 3 and 4 would apply, as contended by Ms. Agnihotri, or Rule 10 would apply, as contended by Mr. Bhattacharya.

38. Mr. Bhattacharya relies on ***Rikhu Dev***[10]. A perusal of the decision would, therefore, be apposite.

38.1 Rikhu Dev filed a suit before the learned trial court, seeking recovery of possession of Shiromani Nirankari Dera, situated at Patiala, of which Rikhu Dev claimed to be the mahant-in-charge, with the right to manage the properties attached to the Dera. Against this, Som Dass, the respondent before the Supreme Court, contended that the Dera was an independent Dera, of which he was in possession of the properties, as its lawfully appointed mahant.

38.2 Rikhu Dev's suit was decreed by the learned trial Court. Som Dass appealed to the High Court. The appeal of Som Dass was

allowed by the first appellate court, against which Rikhu Dev filed a second appeal to the High Court.

38.3 During the pendency of the second appeal, Som Dass expired on 13th October 1970. No application was preferred, to bring on record the legal representative of Som Dass, within the time statutorily prescribed in that regard. The second appeal filed by Rikhu Dev, consequently, abated.

38.4 An application was made by Rikhu Dev on 1st February 1971, seeking to implead one Shiam Dass, as the *chela* left behind by Som Dass. As the application had been preferred beyond the time stipulated for filing an application for substitution of legal representatives, Rikhu Dev prayed that the application be treated as an application for setting aside the abatement of the appeal filed by him before the High Court. It was also prayed that the delay in filing the application be condoned as Rikhu Dev was unaware of the death of Som Dass.

38.5 The High Court, holding that there was no substance in the plea of Rikhu Dev that he was unware of the death of Som Dass, held that the second appeal filed by Rikhu Dev had abated and no ground for setting aside the abatement existed.

38.6 The Supreme Court, in the appeal preferred by Rikhu Dev against the aforesaid decision of the High Court, held thus, in paras 6 to 8 of the report:

"6. We do not think that the view of the High Court was correct. The suit was filed on the basis that the appellant as the lawfully appointed mahant was entitled to manage-the properties of-the Dera- at Landeke that the defendant was unlawfully claiming to be the mahant of the Dera and entitled to manage the properties of the Dera and that the appellant was entitled to be in possession of the properties. As already stated the contention of the defendant was that though the properties belonged to the Dera, he was its lawfully appointed mahant and that the appellant had no right to recover possession of the property of the Dera. When Som Dass died,the interest which was the subject-matter of the suit, devolved upon Shiam Dass as he was elected to be the mahant of the Dera and the appeal could be continued under Order 22, Rule 10, of the Civil Procedure Code against the person upon whom the interest had devolved.

7. Order 22, Rule 10 reads:

> R. 10. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.
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> (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

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."
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> (Emphasis supplied)

39. Mr. Bhattacharya's contention is that the issue in controversy in the case at hand is, on all fours, with that which arose in ***Rikhu Dev***[10]. He submits that, in ***Rikhu Dev***[10], the suit was filed against Som Dass, impleading Som Dass in a representative capacity. Som Dass having expired, and his interest having devolved on Shiam Dass, the Supreme Court held that Order XXII Rule 10 applied, and not Order XXII Rules 3 or Rule 4. The only difference between Rikhu Dev and the present case lay, according to Mr. Bhattacharya, in the fact that in that case, the defendant had been sued in a representative capacity, whereas, in the present case, the complainants have filed the complaint in a representative capacity. There, the defendant who had been sued in a representative capacity had expired and his legal representative was being sought to be brought on record. Here, submits Mr. Bhattacharya, Respondent 1, as the complainant who had filed the complaint in a representative capacity, expired and his legal representatives were being sought to be brought on record.

40. The law enunciated in ***Rinku Dev***[10] therefore, according to Mr. Bhattacharya, is squarely applicable to the controversy in the present case. Resultantly, there can be no question, in his submission, of applying Rules 3 and 4 of Order XXII.

41. I am unable to subscribe to this submission. ***Rikhu Dev***[10] is, in my considered opinion, clearly distinguishable on facts. ***Rikhu Dev***[10] was not a case in which several defendants had been sued, one of whom expired during the pendency of the proceedings. The present case, on the other hand, is one in which more than one complainants had filed the complaint, purportedly representing the interests of all the investors in the project, and one complainant expired.

42. Even if this factor were to be overlooked, in my opinion, the impugned order having been passed at a stage when the application under Section 12(1)(c) of the Act had not even been taken up for consideration, the benefit of the decision in ***Rinku Dev***[10] could not enure in the respondent's favour.

43. The emphasis laid by Mr. Bhattacharya on the word "brought" is, to my mind, really irrelevant. The contention of Mr. Bhattacharya, that mere filing of the complaint before the learned NCDRC was sufficient to treat the complaint as having been "brought" by the respondents cannot, in my view, sustain in law. The reason is apparent from a bare reading of Section 12(1)(c) of the Act.

44. Section 12(1)(c) of the Act states that "a complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided *may be filed* with a District Forum by one or more consumers, where there are numerous consumers having the same interest, *with the permission of the District Forum*, on behalf of, or for the benefit of, all consumers so interested".

This provision has been made applicable, *mutatis mutandis,* to the learned NCDRC, by Section 22(1) of the Act. By application of Section 22(1), therefore, the words "District Forum", as contained in Section 12(1)(c) may be read as "National Commission".

45. Section 12(1) makes it apparent that a complaint, in a representative capacity, may be *filed* with the concerned consumer protection forum only with the permission of such forum. In the case of the learned NCDRC, therefore, a complaint, in representative capacity, may be filed with the learned NCDRC, only with the permission of the learned NCDRC. Till such time as permission is granted, therefore, the complaint cannot be treated as having been filed, even if it has, technically speaking, been tendered in the Registry. Undisputedly, on the date when the impugned order came to have been passed by the learned NCDRC, no permission had been granted by it, under Section 12(1)(c) of the Act, for filing a complaint in a representative capacity. Even if, therefore, the expression "brought" as employed by the Supreme Court in para 8 of the report in ***Rinku Dev***[10] is to be equated with "filed", therefore, I am of the opinion that, till the grant of permission by the learned NCDRC, the complaint could not be treated as having been brought by the respondents in a representative capacity. On the date of passing of the impugned order by the learned NCDRC, therefore, it could not be said that the respondent had brought the complaint before the learned NCDRC in a representative capacity.

46. Any other interpretation could also lead to very anomalous

results. The outcome of the application, filed by the respondents under Section 12(1)(c) of the Act, cannot be predicted as, among other things, "sameness of interest" is required to be established, positively, for a complaint to be filed in a representative capacity, as held by the Supreme Court in ***Brigade Enterprises Limited v Anil Kumar Virmani***[20] as well as in the decision in ***Anjum Hussain***[16]**,** on which Mr. Bhattacharya placed reliance. I do not deem it appropriate to make any further observations in that regard, as the learned NCDRC is in *seisin* of the application of the respondents under Section 12(1)(c) of the Act.

47. Suffice it, nonetheless, to reiterate that, on the date when the impugned order came to be passed, it could not be said that the consumer complaint of the respondents had been brought in a representative capacity so as to exclude the application of Rules 3 and 4 of Order XXII, by applying the law laid down in ***Rinku Dev***[10]. I, therefore, am of the opinion that the contention, of Mr. Bhattacharya, that Rules 3 and 4 of Order XXII of the CPC did not apply in the present case, which was governed exclusively by Order XXII Rule 10, is bereft of substance. It is accordingly rejected.

48. Once it is held that Rules 3 and 4 of Order XXII apply to the present case, the inexorable sequitur is that, no application for substitution of the legal representative of Respondent 1 having been filed on or before 23rd July 2019, the complaint filed by the respondents abated on the said date.

[20] **(2022) 4 SCC 138**

49. Issue I, however, does not, thereby, stand answered. It has further to be considered whether, even if Order XXII Rules 3 and 4 applied, IA 18591/2019, filed by the respondents for substitution of legal representatives of Respondent 1, could be treated as sufficient, as no separate application for setting aside abatement of the consumer complaint, had been moved.

50. In my view, this issue stands covered by the judgment of the Supreme Court in ***Mithailal Dalsangar Singh***[9], as correctly held by the learned NCDRC in para 11 of the impugned order, and no occasion to interfere therewith can be said to exist.

51. The attempt of Ms. Agnihotri to distinguish ***Mithailal Dalsangar Singh***[9] on facts, has, in my considered opinion, to fail. Ms. Agnihotri sought to distinguish the said decision on the ground that, of the three plaintiffs in that case, one plaintiff had expired, and an application to set aside the abatement of the suit, consequent to his expiry, had been moved by his legal representative in accordance with law. The default, she sought to submit, was only in filing on application for setting aside the abatement of the legal representatives of the remaining two plaintiffs. As against this, she sought to emphasize the fact that, in the present case, no application to set aside the abatement of the complaint filed by the respondents had been filed by any of the legal representatives at any point of time.

52. That, however, cannot, in my considered opinion, constitute a basis to distinguish the decision in ***Mithailal Dalsangar Singh***[9].

While, on facts, the distinction between that case and the present, as correctly pointed by Ms. Agnihotri, cannot be gainsaid, the principle of law, as enunciated in para 8 of the report in the said decision, would, in my view, apply *mutatis mutandis* to the case at hand as well. For ready reference, para 8 of the decision in ***Mithailal Dalsangar Singh***[5] may be reproduced thus:

> "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 a 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."
>
> (Emphasis supplied)

53. The observations in para 8, in my considered opinion, are omnibus in nature. They cannot be read as restricted to the facts in ***Mithailal Dalsangar Singh***[9]. Though there exists, classically, a

principle that judgments of the Supreme Court are not to be equated with the theorems of Euclid, and have to be understood in the backdrop of the facts which were before the court, equally important, in my opinion, is the principle that where the Supreme Court declares the position that obtains in law, *in rem*, Courts lower in the judicial hierarchy would be in error if they refuse to follow the principle, by drawing distinctions on facts. Declarations of the law are, by dint of Article 141 of the Constitution of India, binding on every judicial and executive authority in the country.

54. A bare reading of para 8 of the report in ***Mithailal Dalsangar Singh***[9] discloses that having, initially, held, in an omnibus fashion, that "a simple prayer for bringing 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", the Supreme Court goes on to hold that "*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". The words "so also", as used by the Supreme Court, indicate that two distinct propositions of law were being formulated. The first was that, *even if there was no separate prayer for setting aside the abatement of a suit, a prayer for bringing the legal representatives of the deceased party on record was capable of being regarded as a prayer for setting aside the abatement of the suit*. The second proposition, distinct from the first, although connected therewith, is that where there are more than one plaintiffs in a suit, and a prayer for setting aside abatement is filed *qua* one of the plaintiffs, it can be treated as a prayer to set aside

the abatement of the suit in its entirety. While this latter proposition is undoubtedly rendered with reference to the facts which obtained in ***Mithailal Dalsangar Singh***[9], the former general proposition, that a simple prayer for substitution of legal heirs may be treated as a prayer for setting aside abatement, even in the absence of any specific prayer for setting aside abatement having been made, applies, in my view, as an omnibus proposition of the law.

55. There is no reason, in my view, as to why the said principle should not be applied in the facts of the present case. The case at hand is also one in which there were two complainants. One of the complainants expired. By operation of Order XXII Rule 3(2), the complaint abated. Though no formal application for setting aside abatement had been moved by the respondents, a belated application was moved for substitution of the legal heirs of the deceased Respondent 1. Applying the principle enunciated in ***Mithailal Dalsangar Singh***[9], this application could legitimately be treated as an application for setting aside the abatement of the complaint.

56. In any event, this view, as expressed by the learned NCDRC on the basis of the decision in ***Mithailal Dalsangar Singh***[9], clearly does not warrant interference by this Court within the confines of the jurisdiction vested in it by Article 227 of the Constitution of India, as it is a plausible – and, in my opinion, correct – interpretation of the decision in ***Mithailal Dalsangar Singh***[9].

57. Resultantly, even while holding that Order XXII Rules 3 and 4

of the CPC would apply in the present case, rather than Order XXII Rule 10, I am unable to subscribe to the contention of Ms. Agnihotri that, no application for setting aside the abatement of the complaint filed by the respondents having been preferred, the application for substitution of the legal heirs of Respondent 1 could not be treated as sufficient to justify setting aside of the abatement. ***Mithailal Dalsangar Singh***[9], in my view, clearly holds to the contrary and I am in agreement with the findings, in that regard, as returned by the learned NCDRC in the impugned order.

58. Ms Agnihotri had relied on judicial pronouncements, including ***Ram Charan***[13] which hold that, once a suit abates under Order XXII Rules 3 and 4 of the CPC, the remedy lies under Order XXII Rule 9. Statutorily, there can be no cavil with this proposition. These decisions do not, however, rule contrary to ***Mithailal Dalsangar Singh***[9], which mitigates the rigour of the statutory scheme by permitting an application under Order XXII Rule 3, if filed belatedly, to be treated as an application to set aside the abatement; subject, of course, to sufficient cause being made to condone the delay in filing the application.

59. Ms. Agnihotri had sought to place reliance on the decision in ***Madan Naik***[11], to contend that, while no specific order, under Order XXII Rule 9 of the CPC, declaring proceedings to have abated as a consequence of the death of any of the parties to the proceeding, is required to be passed, such a specific order *is* necessary, while setting aside the abatement under Order XXII Rule 9. No such specific order,

she submits, having been passed by the learned NCDRC in the present case, the proceedings in relation to the complaint stand abated.

60. While para 5 of the report in ***Madan Naik***[11] undoubtedly does envisage passing of a specific order setting aside abatement, the argument is really of no serious consequence in the present case, as the impugned order dated 18th April, 2022 of the learned NCDRC, specifically relies on paras 8 to 10 of ***Mithailal Dalsangar Singh***[9]. While doing so, the learned NCDRC has emphasized the finding, in the said decision, that an application for substitution of legal heirs can, in an appropriate case, be treated as an application for setting aside abatement. Besides, as I have already approved this view, the absence of any separate mention, by the learned NCDRC, in the impugned order, that the abatement of the complaint stands set aside, would, in its true sense, be a mere technicality, and cannot be regarded as fatal to the impugned order.

61. Issue (i) and (ii), therefore, would stand answered in favour of the respondents and against the petitioner.

Re: Issue (iii)

62. Issue (iii) which survives for consideration, addresses the question whether the finding of the learned NCDRC, to the extent it condones the delay in preferring IA 18591/2019 and, therefore, allows IA 19664/2019, can be sustained.

63. Mr. Bhattacharya contended, relying on ***Mohd. Shafeeq***[14]**,** that the decision to condone the delay in filing IA 18591/2019, being discretionary in nature, cannot brook interference under Article 227 of the Constitution of India. For this purpose, Mr. Bhattacharya relies specifically on para 3 of the report in ***Mohd. Shafeeq***[10], which reads thus:

> "3. In our opinion, the High Court has taken too technical a view of the error committed by the appellant in pursuing the remedy available to him under the law. The appellant had been prosecuting his remedy diligently and there is nothing to doubt his bona fides. These aspects were taken into consideration by the learned Additional District Judge while condoning the delay in filing the revision. In our opinion, the High Court ought not to have interfered with the order of the Additional District Judge, condoning the delay in filing the revision, being an order passed in exercise of discretion vested in the learned Additional District Judge and for that reason, was not open to interference by the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution."

64. A plain reading of the decision in ***Mohd. Shafeeq***[14] reveals the reliance, therein, placed by Mr. Bhattacharya, to be completely misplaced. The decision does not, in any manner of speaking, completely proscribe interference, under Article 227 of the Constitution of India, with an order, by the court or forum below, condoning delay. There is, equally, no principle in law that discretionary orders are immune from interference under Article 227. No doubt, discretionary orders would invite interference, under Article 227, on fewer occasions than others. Discretion, where vested in the judicial authority, is, however, classically to be exercised judiciously, in a manner which would convince a litigant that the court or forum

has applied itself to all relevant aspects while exercising discretion. Exercise of discretion, if arbitrary or capricious, or otherwise not meeting the expectations and standards for such exercise can, in a give case, justify interference under Article 227.

65. Having said that, the Article 227 court is required to be conscious of the following principles from ***Wander Ltd v. Antox India Pvt Ltd***[21], which delineate the scope and ambit of interference with discretionary orders, albeit in appeal:

> "13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.
>
> 14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have

[21] **1990 Supp SCC 727**

come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in ***Printers (Mysore) Private Ltd. v. Pothan Joseph***[22]:

> "... These principles are well established, but as has been observed by Viscount Simon in ***Charles Osenton & Co. v. Jhanaton***[23] '... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

66. Article 227 operates within a narrower compass than appellate jurisdiction. Where, therefore, the scope of interference with discretionary orders is limited even in exercise of appellate jurisdiction, the scope of such interference, while exercising jurisdiction under Article 227, would be still more circumscribed. Such interference is not, however, foreclosed and, in an appropriate case meriting interference, the Court would be in error if it refuses to do so, merely because it is exercising jurisdiction under Article 227 of the Constitution of India.

67. Remaining conscious of the narrow confines of Article 227 jurisdiction, while dealing with an order passed by the forum below in exercise of discretion vested in it, this Court is required, therefore, to

[22] **AIR 1960 SC 1156**
[23] **1942 AC 130**

examine whether the decision, of the learned NCDRC, to condone the delay in filing IA 18591/2019 merits, or does not merit, interference.

68. The delay in filing IA 18591/2019 is, undisputedly, of 607 days. It is, therefore, by no stretch of imagination, a delay which can be lightly ignored. It is, to use an expression which has now become a cliché, "inordinate". The only explanation, forthcoming in IA 19664/2019, for condoning of the aforesaid delay of 607 days, as contained in paras 5 and 6 of the said application, as reproduced *supra*, is that two of the surviving class-I legal heirs of the deceased Respondent 1, namely, his daughter Leena Goswami and Dr. Sonia Arora, reside outside Delhi. The application does not state where they reside. It is not the case of the respondents, in the application, that they stay outside India, or at some such distant venue at which it is difficult or impossible to reach them. Para 6 of the application goes on to state that "it took some time to coordinate and obtain the requisite documents and the affidavits and the copies of passport from each of the legal heirs". The time so taken is not mentioned. Interestingly, the application reads "therefore *it took some* to coordinate and obtain the *requite* documents and the affidavits and the copies of the passport from each of the legal heirs". Though this aspect can by means be decisive, the care and caution with which the application, which seeks condonation of delay of as many as 607 days, was drafted, is self-evident.

69. In this context, the decisions in ***Balwant Singh***[12] and ***Ram Charan***[13], on which Ms. Agnihotri placed reliance, assume

significance. Both these decisions specifically dealt with a prayer for condonation of delay in filing of an application for setting aside abatement of proceedings. ***Balwant Singh***[12], in fact, also took into account the decision in ***Mithailal Dalsangar Singh***[9] . In the context of delay in filing of an application seeking setting aside of abatement of proceedings, preferred under Order XXII Rule 9 of the CPC, ***Balwant Singh***[12] holds, in para 25 to 27, 33 to 36 and 37 (to the extent relevant), thus:

> "25. We may state that even if the term `sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of `reasonableness' as it is understood in its general connotation.
>
> 26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.
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> 27. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the

application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party"

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33. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law.

34. Liberal construction of the expression `sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect `sufficient cause' as understood in law. [*Advanced Law Lexicon*, P. Ramanatha Aiyar, 2nd Edition, 1997]

35. The expression `sufficient cause' implies the presence of legal and adequate reasons. The word `sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing

circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005]

37. *****

> (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."
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> (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 decided the matter on merits. 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."

70. Similarly, dealing with the condonation of delay in filing an application seeking setting aside of abatement of appeal, on the ground of death of the appellant during the proceedings, ***Ram Charan***[13] holds, in paras 8 and 13 of the report, thus:

"8. There is no question of construing the expression "sufficient cause" liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course, the court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This, however, does not mean that the court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement.

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13. It will serve no useful purpose to refer to the cases relied on for the appellant in support of its contention that the appellant's ignorance of the death of the respondent is

> sufficient cause for allowing its application for the setting aside of the abatement and that in any case it would be sufficient cause if its ignorance had not been due to its culpable negligence or mala fides. We have shown above that the mere statement that the appellant was ignorant of the death of the respondent, cannot be sufficient and that it is for the appellant, in the first instance, to allege why he did not know of the death of the respondent earlier or why he could not know about it despite his efforts, if he had made any efforts on having some cause to apprehend that the respondent might have died. The correctness of his reasons can be challenged by the other party. The court will then decide how far those reasons have been established and suffice to hold that the appellant had sufficient cause for not making an application to bring the legal representatives of the deceased respondent earlier on the record."

71. Clear and cogent reasons are, therefore, required to be adduced by the applicant who files a belated application for setting aside abatement of a suit or proceeding which has abated by operation of law, for condonation of the delay in filing the application. Where such delay is unconscionable or inordinate, as in the present case, this responsibility stands augmented.

72. Authorities, on this point, are numerous.

73. Recently, in ***Majji Sannemma v Reddy Sridevi***[24], the Supreme Court held thus:

> "**17.** In the case of ***Ramlal, Motilal and Chhotelal*** **v.** ***Rewa Coalfields Ltd.***[25], it is observed and held as under:-

[24] **2021 SCC OnLine SC 1260**
[25] **(1962) 2 SCR 762**

> In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when 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 other 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. As has been observed by the Madras High Court in ***Krishna* v. *Chattappan***[26], "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

18. In the case of ***P.K. Ramachandran* v. *State of Kerala***[27], while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

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[26] **(1890) J.L.R. 13 Mad. 269**

[27] **(1997) 7 SCC 556**

19. In the case of ***Pundlik Jalam Patil* v. *Executive Engineer, Jalgaon Medium Project***[28], it is observed as under:—

> "The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "*interest reipublicae ut sit finis litium*", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

20. In the case of ***Basawaraj* v. *Special Land Acquisition Officer.***[29], it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then

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[28] **(2008) 17 SCC 448**
[29] **(2013) 14 SCC 81**

> that would amount to violation of statutory principles and showing utter disregard to legislature.
>
> **21.** In the case of ***Pundlik Jalam Patil***[28], it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "do not slumber over their rights".

At the same time, in ***State of M.P. v S.S. Akolkar***[30] and ***Perumon Bhagawathy Devaswom v. Bhargavi Amma***[31], it has been held that, in assessing whether delay in filing the application for condonation of delay in moving for substitution of legal representatives or for setting aside abatement of the proceedings, the Court should be liberal, rather than unduly strict.

74. It appears, therefore, that, in dealing with applications under Order XXII Rule 3 for substitution of legal heirs, or under Order XXII Rule 9 for setting aside abatement of proceedings, the Court has to strike a balance. The delay, any which way, has to be satisfactory explained. In assessing the sufficiency of the explanation as cause for the delay, however, the Court has to be liberal and expansive in its approach, and to proceed *ex debito justitiae*. The fact that, by abatement of the proceedings, a legal right has enured in favour of the opposite party, can be a delimiting factor only to a restricted extent, and no more.

75. Viewed any which way, however, it cannot be said that the

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[30] **(1996) 2 SCC 568**
[31] **(2008) 8 SCC 321**

averments contained in IA 19644/2019 sufficiently explained the delay of 607 days in preferring the application. They do not even meet the threshold requirement which the application seeking condonation of delay was required to meet. Howsoever expansive a view the Court may adopt, and with greatest respect to the learned NCDRC which has held otherwise, I am unable to convince myself that, even applying the most liberal of standards, the assertions in IA 19644/2019 can be said to have sufficiently explained the delay of 607 days in filing IA18591/2019.

76. Para 8 of the impugned order dated 18th April, 2019, passed by the learned NCDRC, which contains the entire reasoning for condoning the delay of 607 days in filing IA 18591/2019, reads thus:

> "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."

77. With greatest respect, I am of the considered opinion that para 8 of the impugned order dated 18th April, 2019 cannot be regarded as sufficient to justify condonation of the delay of 607 days in filing IA 18591/2019. It appears that the learned NCDRC, in its undoubtedly well-intentioned anxiousness to ensure that the right of the respondents was not frustrated merely on the ground of delay in filing IA 18591/2019, chose to show leniency while dealing with the prayer for condonation of delay.

78. On principle, the approach of the learned NCDRC cannot be

faulted, especially given the fact that the case involves the hard earned money of investors who claim to have been victims of unfair trade practices adopted by the petitioner. Where the puny citizen is pitted, before the Court, against a mammoth corporate entity, no court can be faulted for leaning in favour of the citizen, where the question of sacrificing the right of the citizen to assert his legal remedies, against the corporate entity who is alleged to have breached the contract with the citizen, is concerned. Of course, whether such breach did, or did not take place, would have to dispassionately decided by the forum before which the cause is brought. The right to bring the cause is, however, a valuable right, and the Court would be clearly justified in straining every sinew in ensuring that the right of the citizen, to urge and prosecute his legal remedies, is not lost. What weighs in the balance is access to justice, which cannot be compromised at any cost.

79. While the decision of the learned NCDRC to condone the delay of 607 days in filing IA 18591/2019, as contained in para 8 of the impugned order dated 18th April, 2022 cannot, therefore, be upheld, as it is effectively non-speaking in nature, and the assertions in IA 18591/2019 do not, as they read and by themselves, make out a case for condoning the delay, I deem it appropriate to request the learned NCDRC to reconsider the prayer for condonation of delay, if necessary after seeking additional, better or material particulars from the respondents.

80. This liberty is, needless to say, is not to be construed as any kind of opinion, by this Court, even tentative, to the effect that the

delay of 607 days deserves to be condoned. While considering the application the learned NCDRC is required to bear in mind all relevant considerations, including (i) the extent of delay, (ii) the necessity for a proper explanation for the delay, as it effectively seeks setting aside of the abatement of the complaint, given the law expounded in ***Ram Charan***[13] and ***Balwant Singh***[12], and (iii) the sufficiency of the cause made out by the respondents for condoning the delay. It is reiterated that, in so deciding, should the learned NCDRC deem it appropriate to call for further details from the respondents, explaining the delay in filing IA 18591/2019, it would be at liberty to do so.

Conclusion

81. For the aforesaid reasons, the impugned order dated 18th April, 2022, passed by the learned NCDRC in IA 18591/2019 and IA 19644/2019, is quashed and set aside only on the ground that the order does not make out a sufficient case to condone the delay of 607 days in filing IA 18591/2019. In case the delay is found condonable, both IA 18591/2019 and IA 19644/2019 would stand allowed. For this purpose, the learned NCDRC is requested to re-consider the plea of the respondents for condoning the delay in filing IA 18591/2019 and, therefore, to decide IA 19644/2019 *de novo* and afresh. If, in order to do so, the learned NCDRC deems it appropriate to call for further, better or material particulars or details from the respondents, explaining the delay of 607 days in filing IA 18591/2019, it shall be at liberty to do so.

82. This Court does not express any opinion on whether the delay in

filing IA 18591/2019 deserves to be condoned. The learned NCDRC is requested to take a view in the matter in accordance with the facts and the law, after hearing the parties and following the principles of fair play and natural justice. In doing so, the learned NCDRC would not be influenced by any observations contained in this judgment.

83. The present petition stands allowed to the aforesaid limited extent, with no orders as to costs. Pending applications, if any, stand disposed of accordingly.

C.HARI SHANKAR, J

JULY 11, 2022
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