

(2017) 11 DEL CK 0572

In the Delhi High Court

Case No : Civil Suit (OS) No. 2177 Of 2007, Miscellaneous Application No. 9417 Of 17

Master Rayann Thru His Mother Mrs. Ridhima Juneja

APPELLANT

Vs

P.N. Juneja & Sons HUF

RESPONDENT

Date of Decision : 09-11-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 22 Rule 4

Citation : (2017) 11 DEL CK 0572

Hon'ble Judges : S.P.Garg, J

Bench : Single Bench

Advocate : Geeta Luthra, Ujwal Jain, Samrat Nigam, Abhimanyu Walia, Prerna Mehta, Ashish K.Manchanda

Judgement

S.P.Garg, J

OA 114/2017 (under Rule 4 of Chapter II of DHCR, 1967)

1. By the impugned order dated 27.05.2017, IA 1153/2017 filed under Order XXII Rule 4 CPC read with Section 151 CPC for bringing on record the

legal heirs of the deceased defendant No.4 i.e. Smt.Saroj Rani Juneja was partly allowed. The suit against the legal heirs of the deceased defendant

No.4, i.e., Neera Bajaj and Rabika Khanna who were not brought on record within 90 days from the date of death of defendant No.4 was ordered to

have abated.

2. Undisputedly, the plaintiffs have filed the instant suit for partition of the suit property; plaintiff No.2 is the estranged wife of defendant No.2 and

plaintiff No.1 is their minor son. The present suit is regarding partition of the immovable properties against the family members of the father of the

plaintiff No.1 and husband of plaintiff No.2. Defendant No.4 was defendant

No.3's wife; she expired on 18.12.2015. The plaintiff did not file any application for substitution of legal heirs of the deceased Smt.Saroj Rani Juneja within 90 days from her death. The instant application was filed on 24.01.2017. Factum of death of defendant No.4 finds reflection in the order dated 12.08.2016.

3. Admittedly defendants No.2 & 3 are also the legal representatives of deceased Smt.Saroj Rani Juneja. The suit is being contested by them. In fact, a joint written statement was filed on behalf of defendants No.1, 3 & 4. Needless to say, there was sufficient representation to the estate.

4. In the IA 1153/2017 filed under Order XXII Rule 4 CPC for substitution of the legal heirs of the deceased, the plaintiffs had given credible and

cogent reasons for delay in bringing on record all the legal heirs of the deceased. It is informed that the necessary steps could not be taken due to

financial difficulty and dire circumstances as husband of plaintiff No.2 did not provide monthly maintenance and arrears in terms of the order dated

19.04.2016 of the Hon'ble Supreme Court; not a single penny has been paid since the passing of the order dated 19.04.2016. It is further stated

that settlement talks were going on between the parties after passing of the order dated 19.04.2016 and it continued till November, 2016. The delay in

filing the application for substitution was not deliberate but bonafide and was due to the malafide conduct and intent of defendant No.2. It is further

informed that the plaintiff No.2 and defendant No.2 had met on various dates on 17.10.2016 and 20.10.2016 to resolve the disputes. Moreover, she

had suffered chikungunya in October, 16 and on account of her bad health, she was unable to give instructions to her counsel. All these submissions

cannot be ignored while considering the condonation of delay in filing the application for substitution. In the absence of fraud or collusion or other

circumstances to the detriment of the legal representative who have not been brought on record, the bonafide delay to bring them on record is of no

consequence.

5. In Mahabir Prasad vs. Jage Ram & Ors., 1971 (1) SCC 26 5 and Fakira and Anr. vs. Board of Revenue, Rajasthan at Ajmer and

Ors., AIR 1975 Raj. 208, the Supreme Court observed that where a party dies and one of the legal representatives is already on record, even

though in another capacity, an application describing that he is also on record is

sufficient and the proceedings would not abate even if no application for impleading other heirs and legal representatives is made within limitation.

6. In *K.Rudrappa vs. V.Shivappa*, AIR 2004 SC 4346, it is observed that where substitution application by the legal heirs is immediately filed

after coming to know about the pendency of the suit/appeal from the advocate, substitution would not be rejected on the technical objection that no

prayer for setting aside abatement or for condonation of delay in moving substitution application has been made.

7. In the instant case, the doctrine of substantial representation is applicable. In the suit for partition, all other stakeholders were already on record.

The other legal heirs who had not come on record were the married daughters of the deceased. They also did not come forward to be impleaded as a

party in the present proceedings after coming to know about the death of their mother.

8. It is relevant to note that the factum of defendant No.4's death was brought to the notice of the Court on 12.08.2016. No order of abatement as

such has been passed by this Court. No useful purpose will be served to first abate the suit qua the married daughters of the deceased defendant No.4

and then ask the plaintiffs to file an application for setting aside the abatement as urged by the learned counsel for the defendants. Since there was

substantial representation to the estate of the deceased and the application discloses bonafide reasons for delay in moving the substitution application,

the impugned order whereby the suit stood abated against the married daughters of the deceased Smt.Saroj Rani Juneja cannot be sustained.

9. OA 114/2017 is accepted; the impugned order is set aside.

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10. Amended memo of parties is on record.

11. List before the Joint Registrar on 5th December, 2017 for further proceedings.