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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Date of decision: 8<sup>th</sup> May, 2024**  
+ **CS(OS) 135/2006, I.A. 10424/2023**

BOSCH LIMITED ..... Plaintiff  
Through: Mr. Ashwin Kumar D.S. and Mr.  
Ishan Roy Chowdhary, Advocates.

versus

M/S GUPTAJEE ENGINEERS & ORS. .... Defendants  
Through: Mr. Shikhar Mittal and Ms. P. Lalita  
Sowmya Priya, Advocates for D2.

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

**I.A. 18363/2023 (under Section 151 CPC has been filed on behalf of the proposed legal representative of defendant No. 2, Sh. Sunil Gupta seeking condonation of delay in filing reply to I.A. No. 10424/2023 filed by the plaintiff), I.A. 18365/2023 (under Section 151 CPC filed on behalf of the proposed legal representative of defendant No. 2, Sh. Sunil Gupta seeking condonation of delay in filing reply to I.A. No. 10423/2023 filed by the plaintiff)**

1. The present applications under Section 151 CPC has been filed on behalf of *Sh. Sunil Gupta*, proposed legal representative of the defendant No.2, seeking condonation of delay in filing reply to I.A. No. 10423/2023 & I.A. No. 10424/2023 filed by the plaintiff.

2. For the reasons stated in the applications, the delay of 74 days is condoned. The reply is taken on the record.



3. The applications are accordingly disposed of.

**I.A. 10424/2023 (under Section 5 of Limitation Act, 1963)**

4. By way of present application, the plaintiff seeks condonation of delay of 120 days in filing the Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 for setting aside the abatement of suit *qua* defendant No. 2.

5. **It is submitted in the application** that the exact date of death of defendant No. 2 was not known to the plaintiff till 02.05.2023, when a Reply to Application No. I.A. 16250/2022 was filed by the legal heirs of defendant No. 2. It is further submitted that the plaintiff made every endeavour to secure the details of legal heirs of defendant No. 2 i.e. the proposed defendant herein, about which he came to know only in September, 2022. Immediately thereafter, the plaintiff filed the I.A. 16250/2022 for bringing the legal heirs of the deceased defendant No. 2 on record.

6. Even if it is assumed that defendant No.2 actually died on 16.02.2021, as per the *suo motu Order on extension of limitation* passed in Re: Cognizance for Extension of Limitation, SUO MOTU WRIT PETITION (C) NO. 3 OF 2020 by the Hon'ble Supreme Court of India, the period of 90 days provided under Article 120 of the Schedule under the Limitation Act, 1963, commenced from 01.03.2022 and expired on 29.05.2022

7. It is thus, submitted that there was a delay of approximately 120 days from 29.05.2022 (date on which the 120 day period expired) till 27.09.2022 date of moving the I.A. 16250/2022). When the proposed defendant No. 2 asserted that the suit stood abated in their Reply to the I.A. 16250/2022



which was taken on record on 02.205.2023, the plaintiff had immediately on 19.05.2023 filed I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 for setting aside the abatement of suit *qua* defendant No. 2.

8. It is also submitted that for the reasons stated in the application, the delay of 120 days may be condoned and the Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 for setting aside the abatement of suit *qua* defendant No. 2, may be taken on record and allowed.

9. **The present application has been opposed on behalf of the legal heir of defendant No. 2** on the ground that the suit actually stood abated and the factum of demise of defendant No. 2 had been informed way back in 2021. Even if the period of COVID-19 is excluded, the period for substitution of legal heirs of defendant No. 2 expired in May, 2022 and the Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 for setting aside the abatement of suit *qua* defendant No. 2 should have been filed within 30 days thereafter, which also got expired in June, 2022. The present application has been filed only in May, 2023 and the delay is not of 120 days as claimed, but of about 11 months.

10. It is submitted no cogent explanation has been given for this delay and the application is liable to be dismissed.

11. **Submissions heard.**

12. From the averments made in the present application, it is evident that the delay initially occurred due to the COVID-19 Pandemic. Thereafter, the plaintiff has filed I.A. 16250/2022 under Order XXII Rule 4 CPC on 27.09.2022 for bringing the legal heirs of the deceased defendant No. 2 on record. Due to inadvertence, the Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 for setting aside the abatement of suit



*qua* defendant No. 2, has been delayed.

13. It is evident that the application for substitution of legal heirs had been filed diligently and there is pure inadvertence in not filing the appropriate Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 for setting aside the abatement of suit *qua* defendant No. 2. since the substitution of the legal heir defendant No. 2 can be allowed only after the abatement is set aside.

14. It is also pertinent to observe that the procedural laws cannot be applied against the litigant to deny him the substantive rights. In the interest of justice and for the reasons stated above, the application is allowed and the delay in filing the Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 is hereby allowed.

**I.A. 10423/2023 (under Order XXII Rule 9(2) CPC has been filed by the plaintiff for setting aside of abatement of Suit *qua* defendant No. 2)**

15. The application under Order XXII Rule 9(2) CPC has been filed on behalf of the plaintiff for setting aside of abatement of Suit *qua* defendant No. 2.

16. **Learned counsel appearing on behalf of the legal heirs of the defendant No. 2 has opposed the application** and has submitted that the factum of demise of the defendant No. 2, had been informed way back in 2021. Thereafter, the application under Order XXII Rule 4 CPC was filed in September, 2022, despite the fact that the Suit already stood abated.

17. ***Learned counsel for the legal heir of defendant No. 2*** has opposed the Application No. I.A. 10423/2023 under Order XXII Rule 9(2) of CPC, 1908 on the ground that *no right to sue* survives in favour of the plaintiff



against proposed legal heir of defendant No. 2. It is submitted that the defendant No. 1 Partnership Firm run by defendant No. 2 got dissolved on 31.03.2006. Therefore, the proposed defendant No. 2/Sunil Gupta, who is the son of defendant No. 2/Late Shri J.P. Gupta is in no way responsible for the liabilities of defendant No. 1 and thus, cannot be impleaded as a party.

**18. Submissions heard.**

19. The plaintiff has filed the Suit against the defendant No. 1/M/s Guptajee Engineers, the Partnership Firm and had impleaded defendant No. 2/ Shri J.P. Gupta and defendant No. 3/Shri M.K. Gupta, being the partners of defendant No. 1/M/s Guptajee Engineers. However, in their Written Statement, it was submitted that the Partnership Firm had been dissolved on 31.03.2006 i.e., before the institution of the Suit and the business of the Partnership Firm was taken over by the defendant No. 2/Shri J.P. Gupta as the sole proprietor. Consequently, the name of defendant No. 3/Shri M.K. Gupta was deleted.

20. During the pendency of the Suit, defendant No. 2/J.P. Gupta has died on 16.02.2021 and thereafter, the confusion about whether the cause of action has survived in favour of Shri Sunil Gupta, son of defendant No. 2/J.P. Gupta, has arisen.

21. The defence set up on behalf of the legal heir of defendant No. 2/J.P. Gupta is that the Partnership Firm had ceased to exist even before filing of the present Suit and, therefore, there is no liability of partnership. However, the deceased defendant No. 2/J.P. Gupta himself had pleaded that the business of defendant No. 1/M/s Guptajee Engineers had been taken over by him as the sole proprietor of the Partnership Firm.

22. At this stage, while considering that Application No. I.A. 10423/2023



under Order XXII Rule 9(2) of CPC, 1908 for setting aside the abatement of suit *qua* defendant No. 2, it may not be material to consider whether the defendant No. 2/J.P. Gupta was liable for the liabilities of the defendant No. 1/M/s Guptajee Engineers which had been dissolved, but it is a matter on merits which shall be considered at the appropriate stage. The Suit has been filed in 2006 and the case is being proceeded on merits and the liability of defendant No. 2/J.P. Gupta to be represented through by his son, is to be considered at the appropriate stage.

23. It would be sufficient to mention that the liabilities incurred by a Partnership Firm do not cease to exist merely by its dissolution. Sections 45 and 47 of the Indian Partnership Act, 1932 provide that the partners of the Firm are liable personally for the liabilities of the Firm and that the claims survive against the partners despite the dissolution. The defendant No. 2/J.P. Gupta in his Written Statement has admitted that the defendant No. 1/M/s Guptajee Engineers, the Partnership Firm, had been taken over by him as the sole proprietor. At this stage, it cannot be said that no liabilities have survived against the defendant No. 2/J.P. Gupta, who admittedly took over Defendant No.1/ erstwhile partnership Firm as its sole proprietor. Further, it cannot also be said that the liabilities of defendant No. 2/J.P. Gupta on his demise, have not devolved upon his son, Shri Sunil Gupta.

24. The plea on behalf of the legal heir of defendant No. 2/J.P. Gupta that he cannot be impleaded as there is no right to sue against him, is absolutely fallacious. A proprietorship is only a business name which is run by a proprietor. In case of the death of the proprietor, the right to sue continues against the legal representatives of the proprietor as the real party that is being sued, is the proprietor and not the business as held by the Apex Court



in *Raghu Lakshminarayanan vs Fine Tubes*, (2007) 5 SCC 103.

25. Therefore, it cannot be said that there is no cause of action survives in the present Suit.

26. It is also pertinent to note that a *Set-Off* has also been claimed by the defendant No. 2/J.P. Gupta in his Written Statement. Once it is found that there are outstanding liabilities which the defendant No. 2/J.P. Gupta had been defending, non-impleadment of his legal heir would only result in non-representation of the interest of defendant No. 2/J.P. Gupta in the *Set-off*.

27. In view of the circumstances as discussed above, the application is allowed and the abatement is hereby set aside.

**I.A. 16250/2022 (under Order XXII Rule 4 read with Section 151 CPC has been filed on behalf of the plaintiff for brining on record the legal representatives of deceased defendant No. 2)**

28. The application under Order XXII Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the plaintiff for bringing on record the legal representatives of deceased defendant No. 2.

29. Be listed before the learned Joint Registrar for consideration on 07.08.2024.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**MAY 08, 2024/RS**