

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

+ **WP(C) No.3225/2007**

% **Date of Decision: 02.05.2011**

UOI Petitioner

Through Mr. D.S. Mahendru, Sr. Govt. Counsel

Versus

Dharam Singh & Ors. Respondents

Through Mr. Sant Lal, Advocate for LR's of
respondent No. 34

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers
may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be
reported in the Digest? | NO |

ANIL KUMAR, J.

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CM No. 11942/2010 in W.P.(C) No.3225/2007

This is an application by the petitioner/applicant for setting aside the order dated 2nd August, 2010, dismissing the writ petition in default of appearance of petitioner and his counsel and on the ground that along with the application, being CM No. 2910/2010 for substituting the legal heirs of deceased respondent No. 34, no application seeking condonation of delay in filing the application for

substitution was filed despite the opportunity given and therefore, the petition has abated.

The applicant has contended that on 2nd August, 2010, the counsel for the petitioner could not appear when the matter was taken up by the Court as he was busy in another matter before the Bench of Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice Valmiki Mehta. The application is supported by the affidavit of Dr. Amarpreet Duggal, Director, Foreign Post, Department of Post. The applicant has also contended that the application seeking condonation of delay in filing CM No. 2910/2010 seeking substitution of the legal heirs of deceased respondent No. 34 was in fact filed, however, since the counsel for the petitioner could not appear on 2nd August, 2010 and therefore, the said fact could not be brought to the notice of the Court entailing an observation that the petitioner has not filed any application seeking condonation of delay in filing the application being CM 2910/2009 seeking substitution of the legal heirs and consequently the writ petition was held to have abated also.

The learned counsel for respondent Nos. 1 to 33 and 35 and for the legal heirs of deceased respondent No. 34 states that a reply was filed, however, the same had been returned as it was not filed within time.

By order dated 3rd March, 2011 four weeks' time was granted to the non-applicants to file the replies and consequently, replies should have been filed by 2nd April, 2011. Admittedly, the replies were filed on 18th April, 2011 and were returned. Learned counsel for the respondent/non-applicant is unable to give any cogent reason for not filing the replies within time or to refile them along with appropriate application of condonation of delay. Consequently, the replies are not considered.

The reasons stated by the applicant constitute sufficient cause for setting aside the order of the dismissal dated 2nd August, 2010 and holding that petition has abated. Consequently, the order of dismissal dated 2nd May, 2011 and the abatement of petition is set aside and the application of the petitioner being CM No. 2910/2009 and the writ petition are restored to their original numbers.

Application stands disposed of.

**CM No. 2910/2009 and CM No. 14259/2010 in
WP(C) No. 3225/2007**

The respondent No. 34 had died on 4th February, 2008 leaving behind Smt. Ritu Uppal, Master Kunal and Master Lokesh as his legal heirs. According to the learned counsel for the petitioner/applicant, the right to sue does not survive to the surviving respondents alone and survives to the legal representatives of deceased respondent No. 34.

The reason given for condonation of delay in filing the application for substitution of the legal heirs is that the fact about the death of the deceased respondent No.34 came to the knowledge of the petitioners on 31st March, 2008 and thereafter, considerable time was taken up to ascertain the particulars of the legal representatives of the deceased respondent No.34, which would constitute sufficient cause as contemplated under law in the facts and circumstances.

In the circumstances, the applications are allowed and delay in filing the application for substitution is condoned and the legal representatives of deceased respondent No. 34, as detailed in Para-3 of CM No. 2910/2009, are substituted in place of deceased respondent No. 34.

Applications stand disposed of.

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Amended memo of parties be filed within two weeks.

List for hearing in the category of 'after notice misc. matters' on 29th July, 2011.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

MAY 02, 2011

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