SHARAFAT HUSSAIN (DEAD) THROUGH LRS. A

v.

MOHD. SHAFIQ AND ORS.

SEPTEMBER 2, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.] B

Code of Civil Procedure, 1908/Limitation Act, 1963 :

Delay in bringing the legal representatives on record—Sole appellant died during pendency of appeal—Appeal dismissed as having abated—Application filed seeking setting aside of the abatement, condonation of delay in filing the application and to bring the legal representatives on record—Dismissal for failure to give proper explanation—On appeal held considering the fact that the delay occurred as the counsel for the deceased-appellant could not communicate and the legal representatives were not aware of the appeal, resulting in abatement, delay is condoned—Legal representatives brought on record—High Court requested to dispose of the appeal as expeditiously as possible. C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12261 of 1996. E

From the Judgment and Order dated 25.7.95 of the Delhi High Court in C.M.P. No. 534/92 in R.F.A. No. 118 of 1987.

Manoj Swarup, S. Lalitha Kohli, Manoj Kr. Misra and C. Siddhartha for the Appellants. F

Shri Narain and Yashwanit Mathur for the Respondents No. 2.

Ms. Priya Hingorani for the Respondent. 3. G

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides. H

A This appeal by special leave arises from the order of the High Court of Delhi made on July 25, 1995 in CMP No. 534/92 wherein it was held that the appeal had abated and consequently the same was dismissed.

It is not necessary to dilate upon the facts on merits. Suffice it to B state that pending first appeal in the High Court, the sole appellant died on December 1, 1990. Intimation of death was given by the counsel for the respondents on August 5, 1991, but the application could not be filed due to the delay on the part of the counsel for the deceased-appellant as sworn in by him in his affidavit. Consequently, the appeal having abated was dismissed on November 18, 1991. Then an application came to be filed on C May 4, 1992 seeking setting aside of the abatement, condonation of the delay in filing the application and to bring the legal representatives of the sole appellant on record. That application came to be dismissed for failure to give proper explanation. Thus, this appeal by special leave.

D The advocate for the deceased-appellant has stated in his affidavit thus :

> "As I did not have with me the address of the legal heirs of the appellants even as they lived in the same house where the deceased E resided in Phatak Habash Khan, I could not contact or communicate to them that they had to file an application for substitution of heirs within the stipulated time. It was only on 4.5.1995 that Shri Mazahar Hussain, one of the legal representatives of the deceased, chanced to meet me in Khari Baoli that I informed him of the F appeal having been filed by his late father of which he expressed total ignorance and its abatement."

Consequently, the application came to be filed on May 4, 1992. In view of the statement of the counsel for the deceased-sole appellant that the delay had occurred since he could not communicate to the legal G representatives of the information issued by the respondents of the death and that the legal representatives obviously were not aware of the appeal in filed by their father, that resulted in abatement for not bringing the legal representatives on record.

H The appeal is allowed. Delay is condoned. Abatement is set aside.

Delay in bringing the legal representatives on record is condoned. The legal representatives are brought on record. The High Court is requested to dispose of the appeal as expeditiously as possible. No costs. A

G.N. Appeal allowed.