

**Mehar Elahi Vs. Verhamal**

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**Court :** Delhi

**Decided On :** Aug-16-1982

**Reported in :** 22(1982)DLT384

**Judge :** Sultan Singh, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 22, Rule 3; [Limitation Act, 1963](#) - Sections 5

**Appeal No. :** Second Appeal Nos. 266, 1720, 1721, 1982 and 2931 of 1979

**Appellant :** Mehar Elahi

**Respondent :** Verhamal

**Advocate for Pet/Ap. :** H.L. Sabarwal and; O.P. Hans, Advs

**Judgement :**

Sultan Singh, J.

(1) Respondent Verha Mal filed a petition for fixation of standard rent which was dismissed on 6-3-76 by the Additional Rent Controller. On appeal, the Tribunal by order dated 16-8-1979 fixed the standard rent at Rs. 75 per month, although the agreed rent was Rs. 175 per month. The landlord filed second appeal and during its pendency Mehar Elahi appellant died on 8-8-80. It appears that the respondent on 27-10-80 made an application before the Additional Rent Controller for substitution of heirs and legal representatives of the deceased appellant. In reply it was submitted on behalf of the landlord that Manzoor Elahi was to be substituted as the deceased had executed a Will in his favor. By order dated 6-3-81 Manzoor Elahi was substituted.

(2) On 5-1-1982 the respondent-tenant filed an application (C.M. 266/82) in this second appeal praying that after death of the appellant his heirs having not been substituted. the appeal has abated. In reply Manzoor Elahi the appellant's heir filed an application (C.H. 1720/82) on 24-3-82 under Order 22 Rule 3 of the Code of Civil Procedure and another application (C.M. 1721/82) under section 5 of the limitation Act alleging that there was no necessity of filing a. separate application for bringing on record the heirs of the deceased-appellan.t in second appeal as the respondent had already filed an application before the additional Rent Controller, who by order dated 6-3-81 had directed substitution of Manzoor Elahi. In his application for condensation of delay the applicant submits that there was no period of limitation prescribed for filing application for bringing on record the legal representatives of the deceased in proceedings under the Delhi Rent Control Act. Order 22 Rule 3 of the

Code provides for legal representatives of deceased plaintiff to be made parties to the suit. Rule 11 of Order 22 of the Code provides that the word 'plaintiff shall include 'appellant' and the word 'suit' shall include 'appeal'. Thus if there is death of plaintiff of, appellant Order 22 Rule 3 of the Code applies. Further if appellant dies,, an application is to be made by his heir in the appeal. If the respondent who was like plaintiff before the Additional Rent Controller and has made an application under Order 22 Rule 4 of the Code when no proceedings were pending before the Controller it would not absolve the appellant from taking steps under Order 22 Rule 3 of the Code.

(3) The appellant died on 8-8-80. On 27-10-80 the respondent brought to the notice of the applicant about the pendency of the proceedings as the respondent filed an application for substitution under Order 22 Rule 4 of the Code. Order of substitution was passed by the Additional Controller on 6-3-81. The heirs of the deceased-appellant were thus aware that proceedings for fixation of standard rent were pending. On 5-1-82 an application was filed in this Court. No action was taken by the applicant since the passing of the order dated 6-3-81 by the Additional Controller. The application is late by more than one year. The learned counsel for the applicant in support of his argument that Limitation Act does not apply relies upon *Subhash Chander v. Mehmata Ullah* : 1972RLR154 . There is no dispute about the proposition that the Limitation Act does not apply to proceedings before the Rent Control authorities. The second appeal however, is a proceeding before this Court and, therefore, the procedure applicable to second appeals in this Court would be applicable to the second appeals under the Rent Control Act *Fee : Shiv Datt Sharma v. Prem Kumar Bhatia*, 1969 R.C.R. 744 and *Collector, Varanasi v. Gauri Shan-ker Misra and others*, : [1968]1SCR372 . (3) The Limitation Act will be applicable to the second appeal. According to Article 120 of the Limitation Act, a period of 90 days is prescribed for bringing on record the legal heirs of the deceased appellant. The application is hopelessly barred by time. For condensation of delay the applicant submits that as the respondent had made an application before the Additional Rent Controller for bringing on record the legal heirs of the deceased landlord, he was under the impression that it was not necessary to do so. This is only an imagination, of the applicant. The application was filed through a lawyer. The respondent made an application before the Additional Rent Controller. The applicant was put on guard but still he did not take any action. The words 'sufficient cause' in section 5 of the Limitation Act are to be given liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of bonafides, is imputed to the appellant. In the instant case it is clear that the applicant has been negligent and inactive since the date of death of the deceased appellant. The period of 90 days was available. An application as already stated was made by the respondent before the Additional Rent Controller. Even after the filing of the application by the respondent the applicant did not take any action for substitution. It shows his inaction. There is thus no sufficient cause for condensation of delay. The applications (C.M. Nos. 1720 and 1721 of 1982) filed by the .applicant are dismissed. The application (C.M. 266 of 1982) of the respondent is allowed holding that the second appeal (S.A.O. 293 of 1979) has abated. Accordingly S.A.O. 293 of 1979 stands dismissed. No order as to costs.