O.22 R.9

O.22 R.9: Application to set aside abatement of Suit

The accrual of cause of action to file this Application: Where the Plaintiff or the legal representatives of the deceased Plaintiff fails to take out appropriate Application within 90 days from the date of their knowledge of the death of the Plaintiff / Defendant, as the case may be, and the Suit abates as a consequence thereof, the plaintiff or the person claiming to be the legal representative of the deceased plaintiff may make an Application under this Rule, praying to set aside the abatement or dismissal of the Suit, by showing cogent and reasonable grounds due to which they were prevented from adopting appropriate proceeding in that behalf.

The Application may be taken in the form of a Notice of Motion / Notice / Exhibit / Chamber Summons, as may be prescribed under the applicable provision of law, and duly verified by the Applicant.

A broad approach to drafting of any Application may be undertaken in three chronological “Heads” –

(1) Reliefs prayed for / claimed: It is of central importance that any Relief prayed / claimed for, must be duly articulated, keeping in mind (a) the nature of jurisdiction being exercised by the court having regard to the nature of Application which is sought to be filed / moved; (b) the rights / interest claimed by the Applicant; (c) the obligations and liabilities of the opposite party.

(2) Grounds for Reliefs prayed for / claimed; (both factual and legal): Grounds for Reliefs prayed for / claimed, implies (a) the essence / conclusion of material facts or proposition of facts which supports the reliefs prayed for / claimed; and (b) the provision of law / judgments of the Apex Court or High Courts, which supports the reliefs prayed for / claimed.

(3) Material facts of the case: Narration of material facts thereby substantiating the grounds on which the reliefs are claimed.

O.22 Rule 9: Effect of abatement or dismissal

(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877 (15 of 1877) , shall apply to applications under sub-rule (2).

Explanation.-Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.