

## (For Condonation Of Delay Of 16 Days In ... vs Om Prakash Shokeen And Ors on 14 February, 2019)

**Author: Rajiv Sahai Endlaw**

**Bench: Rajiv Sahai Endlaw**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 314/2008, OA No.146/2017 (of the plaintiff/appellant for setting aside of order dated 13.09.2017), IA No.12450/2017 (u/S 151 CPC), IA No.7284/2018 (u/O XXIII R-1A CPC), IA No.10811/2018 (for condonation of delay of 16 days in re-filing application u/S 340 Cr.P.C.), IA No.11945/2018 (u/S 151 CPC) & IA No.16466/2018 (u/S 151 CPC)

BAL KISHAN SHOKEEN

..... Plaintiff

Through: Mr. Pushkar Sood, Adv.

Versus

OM PRAKASH SHOKEEN AND ORS.

..... Defendants

Through: Mr. R.N. Vats & Mr. Ajay Kumar

Mishra, Advs. for D-1.

Mr. Arvind Bhatt, Adv. for D-2.

Mr. Dharmendra Kumar Mishra, Adv.

for D-3.

Ms. Beenashaw N. Soni & Mr. Aakash

Yadav, Advs. for D-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 14.02.2019

1. The counsel for the plaintiff states that the defendant no.1 Om Prakash Shokeen died on 6th February, 2018 leaving defendant no.3 Rajan Kumar Shokeen and Anurag Shokeen as his sons and only heirs. On enquiry, it is stated that the wife and mother of defendant no.1 Om Prakash Shokeen had pre-deceased him and defendant no.1 Om Prakash Shokeen did not have any daughters.

2. Mr. Ajay Kumar Mishra, Advocate who was earlier appearing for defendant no.1 Om Prakash Shokeen states that he is now appearing for Anurag Shokeen.

3. The counsel for the defendant no.3 Rajan Kumar Shokeen is also present.

4. This being a suit for partition, cause of action survives. On oral request of the counsel for the plaintiff aforesaid, the defendant no.3 Rajan Kumar Shokeen and Anurag Shokeen are impleaded in the suit as heirs of defendant no.1 Om Prakash Shokeen. The plaintiff to file amended memo of parties showing both defendant no.3 Rajan Kumar Shokeen and Anurag Shokeen substituted in place of defendant no.1 and Rajan Kumar Shokeen to also continue as defendant no.3.

5. The counsel for the plaintiff states that OA No.146/2017 is pending consideration.
6. Vide order dated 15th October, 2018 in the said OA, the plaintiff Bal Kishan Shokeen was ordered to be examined by the Medical Board to be constituted by National Institute of Mental Health and Neurosciences (NIMHANS), Bengaluru, to report on his mental faculties.
7. It is informed that the plaintiff Bal Kishan Shokeen has only two sons, of which the elder one Hitender Kumar Shokeen is already defendant no.4 and the younger son Jitender Shokeen is seeking appointment as next friend / guardian of plaintiff for the purpose of the present suit, stating that the plaintiff, owing to the state of his mind, is incapable of looking after his own interest.
8. The counsel for the defendant no.1 and the counsel for the defendant no.2 state that they have no objection to Jitender Shokeen being appointed as guardian to plaintiff Bal Kishan Shokeen.
9. The counsel for the defendant no.3 Rajan Kumar Shokeen states that subject to the report of medical examination, he has no objection.
10. The counsel for the defendant no.4 Hitender Kumar Shokeen opposes the appointment of his brother Jitender Shokeen as the next friend / guardian of their father Bal Kishan Shokeen. It is stated that the interest of Jitender Shokeen is adverse to that of plaintiff Bal Kishan Shokeen and he is thus not entitled to be appointed as a next friend / guardian. It is also stated that Jitender Shokeen had manipulated the medical reports in Delhi, by getting some other person examined instead of the father and several of the tests conducted at Bangalore and on the basis of which report has been submitted, were also in the absence of the defendant no.4 Hitender Kumar Shokeen and the defendant no.4 is wary that Jitender Shokeen may have produced some other person therefor.
11. The counsel for the defendant no.4, on enquiry states that defendant no.4 has not met the father since the year 2012.
12. To put the controversy to rest, I have proposed that the plaintiff Bal Kishan Shokeen appears in this Court.
13. The counsel for the plaintiff states that it is medically not possible for the plaintiff to travel from Bangalore.
14. I have alternatively proposed that Jitender Shokeen be impleaded as a party to this suit, just like defendant no.4 Hitender Kumar Shokeen has been impleaded.
15. However, the counsel for defendant no.4 Hitender Kumar Shokeen objects to the same also stating that Jitender Shokeen is claiming the properties subject matter of this suit for partition to be personal properties of plaintiff and defendants no.1 and 2 while the case in the suit is of the said properties being HUF properties.

16. I have enquired from the counsel for the defendant no.4 to show the averment to the said effect in the plaint.

17. The counsel for the defendant no.4 states she has not brought the file with her and has only brought the file of OA No.146/2017. Though the court file has been given to the counsel for the defendant no.4 Hitender Kumar Shokeen but she is still not able to show.

18. Adjournment is requested.

19. The other counsels also, to on the next date, take a definite stand, whether according to them the properties are of HUF of each of plaintiff and defendants no.1 and 2 or their personal properties.

20. List on 8th April, 2019.

RAJIV SAHAI ENDLAW, J FEBRUARY 14, 2019 „gsr ..