

(1999) 07 P&H CK 0180

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 3183 of 1998

Gursharan Singh

APPELLANT

Vs

M/s Varinder Kumar Surinder

RESPONDENT

Mohan

Date of Decision: July 20, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 3, Order 22 Rule 3(1), Order 22 Rule 3(2)

Citation: (2001) 4 RCR(Civil) 90

Hon'ble Judges: Amar Dutt, J

Bench: Single Bench

Advocate: Mr. G.S. Nagra, for the Appellant; Mr. G.I. Sharma, for the Respondent

Final Decision: Allowed

Judgement

Amar Dutt, J.

This revision petition is directed against the order dated 23.4.1998 passed by the Civil Judge (Junior Division), Nakodar, by which he had dismissed the applications dated 23.7.1997 and 27.10.1997 under Order XXII Rule 3, CPC.

2. The challenge to the impugned order is confined to the fact that the trial Court while passing the order has not taken into consideration the Punjab Government Notification No. GSR 17/CA 5/8/01.22/Amd. 92 dated 4.2.1992, which reads as under :-

"Rule 3(2): "Where within the time limited by law no application is made under Sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist."

By order of Hon"ble the Chief Justice and Judges.

Surinder Sarup,

Registrar."

On the basis of this notification, It was submitted that the court below had erred in dismissing the application under Order XXII Rule 3 CPC as barred by time, because in consequence of the amendment, the suit of the plaintiff would have to be adjudicated upon notwithstanding the death as if the judgment had been pronounced before the death had taken place. It was open to the legal representatives of the plaintiff to have joined the proceedings by moving appropriate application before the judgment was pronounced. Since the trial Court had not pronounced the judgment prior to the date of filing of the application under Order XXII Rule 3 Code of Civil Procedure, it could not have dismissed the application as barred by time. Consequently, the order passed by the Civil Judge (Junior Division), Nakodar, cannot be sustained and has to be set aside. As a result the Civil Revision is allowed and the application filed by the petitioner is allowed and it is directed that Gursharan Singh, Amarjit Singh, Gurdeep Kaur, Jaswinder Kaur and Kamaljit Kaur should be brought on record as legal representatives of the plaintiff.

3. Revision allowed.