(2014) 08 UK CK 0021

Uttarakhand High Court

Case No: CLMA No. 6673 of 2008, CLMA Nos. 8348, 8349, 8350 and 9226 of 2014 in Appeal from Order No. 401 of 2008

Ikbal Ahmad	APPELLANT
Vs	
Matloob Hasan	RESPONDENT

Date of Decision: Aug. 25, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13

Hon'ble Judges: Servesh Kumar Gupta, J

Bench: Single Bench

Advocate: Mahavir S. Tyagi, Advocate for the Appellant; Lok Pal Singh, Advocate for the Respondent

Judgement

Servesh Kumar Gupta, J.

Having heard the learned counsel for the appellant as well as the main contesting respondent no. 3 (plaintiff), whose suit was decreed, it transpires that latter had died on 27.8.2011 but the information of his death was submitted by learned counsel for the appellant in the Court on 15.05.2014. So, the Substitution Application No. 8350 of 2014 was moved on 01.08.2014 well within the maximum time prescribed for such substitution.

2. Learned counsel for the respondent no. 3 has resisted this substitution application by placing reliance upon the death certificate (Annexure 1) enclosed with the setting aside abatement application no. 8349 of 2014 by arguing that this death certificate, showing the death of Sri Swaroop Singh on 27.7.2011, was issued on 03.09.2011. So, issuing the said certificate, by itself, should be enough to presume the knowledge to the appellant regarding the date of death of Sri Swaroop Singh. If it is taken in that sense then this substitution application has been moved quite belatedly and it should be dismissed. The Court is unable to agree with the said contention for the reason that issuance of such certificate, on 03.09.2011, by itself, does not show that it was issued to the appellant in person on his application. In

those circumstances, it should be taken in the sense that the appellant could gather information about the death of plaintiff only when his learned counsel submitted information in the Court on 15.05.2014.

3. Learned counsel for the plaintiff/respondent no. 3 has also referred to the provision of Serial No. 120 of the Schedule (part 1-Application in Specified Cases) under the Limitation Act, wherein the period of 90 days has been prescribed for moving the application from the date of the death of the plaintiff/appellant, defendant or respondent, as the case may be. This is the time when the substitution application should have been moved. This provision nowhere envisages the date of knowledge unlikely of the Order 9 Rule 13 of the Code of Civil Procedure.

4. I am unable to agree with this contention also for the reason that the possibility cannot be ruled out where the affected party may not have any knowledge regarding the date of death of his opponent wherefore e the substitution application has to be moved seeking impleadment his heirs. There may be cases where the opposite party may not have knowledge even for years regarding the death of his opponent.

5. So, this provision, as contemplated hereinabove, should be interpreted enhancing the time of moving application for substitution, even in such cases, not strictly to the 90 days, but from the date when he comes to know regarding the death of his opponent.

6. With this construction, as has been made above by this Court, the substitution application (CLMA 8350/2014) is considered to have been filed well within time and it is hereby allowed for the reasons stated therein.

7. Resultantly, the delay condonation application in setting aside the abatement (CLMA 8348/2014) as also the application seeking setting aside of the abatement of respondent no. 3 (CLMA 8349/2014) are disposed of. At the same time, the application, seeking to file objection against the substitution application (CLMA 9226/2014) is rejected.

8. Two weeks'' time, as prayed for, is granted to the learned counsel for the appellant to file the amended memo of parties.

9. List this matter in the week commencing 15.09.2014 for final hearing.