

Jhabbu Lal Vs Purroo and Others

Court: Madhya Pradesh High Court

Date of Decision: Feb. 27, 2007

Acts Referred: Limitation Act, 1963 " Section 5

Citation: AIR 2007 MP 223

Hon'ble Judges: Dharendra Mishra, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Dhirendra Mishra, J.

This Civil Revision is directed against the order dated 6-5-96 passed by 2nd Civil Judge Class-II, Raipur in Civil Suit

No. 119-A/94 whereby the application of the non-applicant/plaintiff under Order 22. Rule 3 of the C.P.C. for bringing Legal Representatives of

deceased Puroo has been allowed and name of the respondents No. 1. 1 to 1.4 has been ordered to be substituted in place of deceased/Puroo.

2. The short question involved for adjudication of this Civil Revision is that whether an application under Order 22, Rule 3 of the C.P.C. for

substitution, preferred after expiry of 90 days from the date of the death of plaintiff, can be considered and allowed in the absence of an application

for setting aside abatement under Order 22. Rule 9 of the C.P.C.

3. Learned Counsel for the applicant submits that plaintiff Puroo died on 15-5-89 and respondent No. 1.1 to 1.4 Legal Representatives filed

application for bringing them as Legal Representatives of plaintiff on 22-11-89. admittedly, after a period of 90 days of the limitation prescribed for

the same, when the suit stood abated.

4. The above application was not maintainable in the absence of an application under Order 22. Rule 9 of the C.P.C. for setting aside the

abatement. Learned Civil Judge could not, have considered the application preferred by the Legal Representatives as an application for setting

aside abatement.

5. On the other hand learned Counsel for the non-applicants submitted that the application for substitution without bringing application for

abatement is maintainable and such application may be treated as an application for setting aside abatement and in appropriate cases where the

Court is satisfied with the reasons assigned for preferring this application belatedly the Legal Representatives can be permitted to be substituted

and abatement could be set aside

6. Reliance is placed in the matter of Sri Ram Prasad Vs. The State Bank of Bikaner and Others, in the matter of Maghar Mal and Sons Vs. The

National Fertilizers Ltd., and in the matter of Smt. Kamlesh Vs. Tekchand and Others, .

7. I have heard learned Counsel for the parties.

In the matter of Sri Ram Prasad Vs. The State Bank of Bikaner and Others, , it is held thus:

learned Counsel for the applicant has next contended that the application purports to be under Order 22, Rule 4 and, not under Order 22, Rule 9,

C.P.C. and in the absence of a prayer for setting aside the abatement the application under Order 22, Rule 4, C.P.C. was not maintainable. The

argument of the learned Counsel for the applicant is fallacious. If there had been no abatement there could be no question of setting aside the

abatement. Moreover, in a case where an applicant applies for condoning the delay and for bringing on record the Legal Representatives, a prayer

of setting aside the abatement is implicit in the prayer for substitution.

8. In the matter of Maghar Mal and Sons Vs. The National Fertilizers Ltd., , in para 5 it has been held thus:

it is clear that in case a suit does not abate and an application for impleading the Legal Representatives of the deceased-plaintiff is made, the Court

in case it is disputed that the persons sought to be impleaded are the Legal Representatives of the deceased, shall determine first that question and

if they are found to be so, they shall be impleaded as plaintiffs. If the suit has abated in that case an application for setting aside abatement should

be made. On that application, the Court in addition to finding out as to whether the applicants are the Legal Representatives of the deceased shall

also determine whether there are sufficient grounds to set aside the abatement. If the Court determines both the questions in favour of the applicant,

the abatement shall be set aside and the Legal Representatives will be impleaded as plaintiff's in place of the deceased. However, if either of the

questions is decided against the applicants, Legal Representatives shall not be entitled to be substituted as the plaintiffs. It is well settled that if an

application is made for impleading the Legal Representatives of a deceased-plaintiff in a suit which has abated, the application should be treated as

an application for setting aside the abatement and proceeded with accordingly.

9. Similarly in the matter of Smt. Kamlesh AIR 2003 All 299 (supra) it has been observed that:

an application made to bring the Legal Representatives of the deceased defendant on record after the time prescribed therefore by law should

ordinarily be treated as an application to set aside the abatement of the suit which has taken place even though it is not asserted that the delay was

due to any reasonable cause. The evidence about the sufficient cause for the delay can be produced in the appellate Court and all that is necessary

is that the Court should feel satisfied that discretion should be exercised in favour of the party seeking the setting aside of the abatement.

10. Thus, from the above judgments it is evident that the application for substitution under Order 22, Rule 3 of the C.P.C. or under Order 22, Rule

4 of the C.P.C. filed after prescribed period of limitation i.e. 90 days, is to be ordinarily treated as an application to set aside the abatement of the

suit which has taken place even though no formal prayer for setting aside abatement has been made in the application.

11. In the instant case also the Legal Representatives of the plaintiff moved an application under Order 22, Rule 3 of the C.P.C. for substituting

their names in place of the plaintiff Puroo Dheemar since this application was filed beyond the prescribed period of limitation. Another application

u/s 5 of the Limitation Act for condonation of delay in filing the above application was filed which was supported with an affidavit and the Court

below considering the reasons assigned for delay in filing the application, condoned the delay and allowed the application for substitution.

12. On the basis of the aforesaid discussion, I am of the opinion that there is no illegality or infirmity in the impugned order which calls for

interference under the revisional jurisdiction. The revision is thus devoid of substance and the same is dismissed with cost.