Kishandas Bakhatmal Vs The Municipal Corporation of The City of Ahemedabad

Court: Bombay High Court

Date of Decision: June 24, 1958

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 22 Rule 4

Citation: (1958) 60 BOMLR 1357

Hon'ble Judges: M.C. Chagla, C.J

Bench: Single Bench

Judgement

M.C. Chagla, C.J.
The plaintiff filed a suit against the Municipal Corporation of the City of Ahmedabad. The plaintiff was a sub-tenant of

one Hassanali Gulamali who was joined as a party defendant to the suit. The tenant, defendant No. 2, died on July 6, 1955, and an application to

bring his heirs on record was made on October 5, 1955. The application, as is obvious, was beyond time, having been filed 91 days after the

death of defendant No. 2. The application was, therefore, dismissed. The plaintiff then made another application on January 13, 1956, for

condonation of delay of one day. That application was also dismissed. The plaintiff then went in appeal and the learned District Judge dismissed the

appeal.

2. It is perfectly true that, as the record stands, the petitioner has no case. He files an application, for bringing the heirs of defendant No. 2 on

record when that application is out of time and when the suit has already abated. The proper application should have been for setting aside the

abatement. Then, he applies for condonation of delay when there is no provision in law for condonation of delay. Finally, he appeals against an

order which is an order under Order XXII, Rule 4, of the CPC when no appeal lies. But one must look to the substance of the matter and not

merely to the form. Certain authorities have laid down-and there is reason behind these authorities-that when a party applies for bringing heirs or

legal representatives on record and an application is made beyond time, the application should be looked upon as an application to set aside the

abatement. These authorities are based on the sound principle that Courts exist to help litigants and not to hinder them. If the trial Court had only

advised the lawyer to convert the first application into an application to set aside the abatement, there would have been no difficulty whatsoever;

but it treated the application technically as an application under Order XXII, Rule 4, and then when the second application was made, it could not

be treated as an application to set aside the abatement because that application was also beyond time and then the question would have been

about the condonation of delay. I am sorry that the learned District Judge also could not be persuaded to take a commonsense view of the matter.

Mr. Vakil tells me that there is no substance in the petitioner''s litigation. The parties who come to Court like to have their suits heard before they

are told that there is no substance in their litigation; and I think this is a case where a commonsense view of the matter should be taken and the

procedure should not be permitted to defeat the ends of justice. I will, therefore, treat the application made on October 5, 1955, exh. 48, as an

application to set aside the abatement. That application, if so treated, is within time; and if the application is treated as an application under Order

XXII, Rule 9, then an appeal is competent and a revision application would lie against that order. I may say, in fairness to the petitioner, that he has

given reasons why he could not bring the heirs of the deceased defendant No. 2 on record. The petitioner is a displaced person who says he did

his best to get the names of the legal representatives of the deceased defendant No. 2 and he failed to do so, and as soon as he got the names, he

applied to the Court. Unfortunately, he was badly advised by his lawyer who should have known that the proper application should have been an

application to set aside the abatement and not an application to bring the heirs of the deceased defendant No. 2 on record.

3. The result is that I make the rule absolute and direct that the heirs of the deceased defendant No. 2 should be brought on record. The petitioner

must pay costs of this revision application to respondent No. 1, as I am showing him an indulgence. I also direct that as soon as the papers go

back, the learned trial Judge will forthwith try and dispose of the suit. The petitioner has undertaken before me that he will go to trial immediately

and no application for adjournment on his part should be entertained by the trial Court. The order of the appellate Court will be set aside. The

petitioner to pay costs of the appeal to respondent No. 1.