

Moulasab Vs. Mohammad Hasim (Deceased) by L.Rs and ors.

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Court : Karnataka

Decided On : Nov-18-2002

Reported in : 2003(2)KarLJ48

Judge : B. Padmaraj, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 3, Rule 2 - Order 9, Rule 7

Appeal No. : Civil Revision Petition No. 4381 of 2002

Appellant : Moulasab

Respondent : Mohammad Hasim (Deceased) by L.Rs and ors.

Advocate for Pet/Ap. : Shardulsab, General Power of Attorney Holder

Disposition : Petition dismissed

Judgement :
ORDER

B. Padmaraj, J.

1. The application filed by the legal representatives of the defendant 2 under Order 9, Rule 7 of the CPC to permit them to appear to defend in the case having been allowed by the Trial Court, the plaintiff by his power of attorney holder is in revision

before this Court.

2. It appears that the original defendant 2 had died on 13-5-2002 and notice to his legal representatives was issued in the suit and since they did not appear, the suit was adjourned after declaring them ex parte. Subsequently, during the pendency of the suit, they appeared and made an application under Order 9, Rule 7 of the CPC to permit them to appear and defend in the case. The Court below allowed the application, obviously with an intent to afford them an opportunity to resist the claim of the plaintiff. It would be of some relevance to note here itself that the ex parte order only covers the period during which the defendant was actually absent and it did not act as a bar to his resuming appearance in the suit at the stage at which it then was, if he appeared subsequently and wanted to put forward his evidence. That is to say, if the defendant wants to proceed from the stage already reached, he will have an absolute right without obtaining the permission of the Court to take part in the proceedings. Order 9, Rule 7 of the CPC does not mean that defendant cannot be allowed to appear at all if he does not show good cause. All it means is that he cannot be relegated to the position he would have occupied if he had appeared. He cannot be stopped from participating simply because he did not appear in the first or some other hearing. He will have to show good cause for his previous absence and get the ex parts order set aside only if he desires to be relegated back to the position in which he would have been put if he had appeared at the previous proceedings so that the proceedings in his absence could be reopened. That appears to be not the case here. Though the Trial Court has set aside the ex parts order by allowing I.A. No. 15 of the legal representatives of the deceased defendant 2, it does not in any way indicate that they should be relegated back to the position in which they have been put if they had appeared at the previous hearing. What I could gather from the impugned order made by the Trial Court is that the application filed by the legal representatives of the deceased defendant 2 to appear to defend in the case has been allowed by the Court below solely on the ground it would be in the interest of natural justice to permit them to appear in the case. As I have already stated, the order does not say that they should be relegated back to the position in which they would have been if they had appeared in the previous hearing so that the proceedings in their absence could be reopened. In view of these facts, I am of the view that the Trial Court had not

acted in the exercise of its jurisdiction illegally or with material irregularity and hence there could be no interference by this Court with the impugned order made by the Trial Court. In fact this is a petition filed by the petitioner through his power of attorney holder and the power of attorney holder cannot have right of audience before this Court. It is needless to point out that the recognised agent holding general power of attorney cannot be allowed to plead and argue. He can only appear and conduct the judicial proceedings and has no right of audience. Power to plead on behalf of a party in judicial proceedings vests only with the pleader. This is very clear from the provisions contained in Order 3, Rule 2 and Order 3, Rule 4 of the CPC. Notwithstanding such technicality, I heard the general power of attorney holder for the petitioner and I find no good ground to entertain this revision petition and it is accordingly dismissed. It is however made clear that the impugned order made by the Trial Court will not have the effect of relegating back to the position in which they would have been put if they had appeared at the previous hearing so that the proceedings in their absence could be reopened and it would only permit them to proceed from the stage already reached and they will be allowed to appear and take part in the proceedings from the stage already reached. If they want to be relegated to the previous position, then the Court will have to pass an appropriate order in accordance with the provisions contained in Order 9, Rule 7 of the CPC. In the absence of any such order, the Court cannot place them in the position which was earlier to the date on which they appeared before the Court to participate in the proceedings. With these observations, the revision petition filed by the petitioner through his power of attorney holder stands dismissed.

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