

Gurjala Bharathi and anr. Vs. Vindhya Corporation and ors.

Gurjala Bharathi and anr. Vs. Vindhya Corporation and ors.

SooperKanoon Citation : sooperkanoon.com/441271

Court : Andhra Pradesh

Decided On : Jul-13-2007

Reported in : AIR2007AP325; 2007(5)ALD595; 2007(5)ALT600

Judge : B. Prakash Rao and ;G. Bhavani Prasad, JJ.

Acts : Limitation Act - Sections 5; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rule 10A

Appeal No. : CRP No. 1674 of 2000

Appellant : Gurjala Bharathi and anr.

Respondent : Vindhya Corporation and ors.

Advocate for Def. : K.S. Gopala Krishnan, Adv.

Advocate for Pet/Ap. : S.V. Muni Ready, Adv.

Judgement :

B. Prakash Rao , J.

1. This case is coming up before us on a reference made by learned Single Judge (Justice Bilal Nazki) for consideration of the question as to whether the law laid down by this Court in Food Corporation of India v. Sri Ramachandra B&R; Rice Mill : AIR 1985 AP23 and also Vijayalakshmi Jayaram v. M.R. Parasuram : AIR

1995 AP351 , that under Order XXII Rule 10A of CPC there is a duty cast on the advocate appearing for a deceased defendant to give the list of legal representatives of the deceased is correct.

2. Heard Sri S.V. Muni Reddy, the learned Counsel appearing on behalf of the petitioners and Sri K.S. Gopalakrishnan, on behalf of the respondents.

3. The brief facts which give rise to the aforesaid question and as mentioned in the reference are to the following effect:

4. There has been a delay of 345 days in representing an application for bringing on record the legal representatives of the 6th defendant in a suit. The said application has been dismissed and therefore this revision has been filed.

5. The 6th defendant admittedly had died on 4th March 1998. A memo was filed by his Counsel on 19.8.1998 informing the Court about the death of the 6th defendant. An application by the plaintiff was filed on 12.7.1999 for bringing on record the deceased defendant's legal heirs. Admittedly, there is a long delay. The only question raised before this Court by the learned Counsel for the petitioners was that in terms of Order XXII Rule 10A of the Code of Civil Procedure the duty is cast on the Counsel appearing for a defendant, who dies during the pendency of the suit, not only to inform about the date of death of his client but also to inform the Court the particulars of the legal representatives of his deceased client; since the Counsel failed to furnish that information and the plaintiff did not know about the particulars of the legal representatives of the deceased defendant, it took them a long time to make enquiries and the enquiries were completed only two days before filing the application. He relies on two judgments of this Court in Food Corporation of India's case (supra) and Vijayalakshmi Jayaram's case (supra).

6. From the above backdrop, the learned Single Judge expressing doubts about the correctness of the interpretation given to Rule 10A of Order XXII of CPC referred the matter for an authoritative pronouncement.

7. Before taking up the question, it would be apt to refer to the said Rule 10A of Order XXII of CPC, which reads as follows:

Duty of pleader to communicate to Court death of a party.-Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

8. The above rule was added by way of an amendment under Act 104 of 1976 and it has come into force with effect from 1.2.1977. The objects and reasons as mentioned in the Bill in support of the said amendment are that the above new rule is being inserted to impose an obligation on the pleaders of the parties to communicate to the Court the death of the party represented by him. From the above and also on a bare reading of the above rule, it can safely be said that apparently with a view to avoid any delays in obtaining knowledge of the death of any party by the other side, such an obligation is created on the pleader by giving an extended authority, though establishedly any such authority as a pleader would come to an end on the death of the party whom he represents. Therefore, as and when a pleader comes to know of the death of the party whom he represents, he has to intimate to the other side in appropriate manner about the death so that the other side would take steps to bring the legal representatives on record. This avoids any legal representatives of the parties, at later stage, to come out with any version to the effect that the orders or judgments are passed against the dead person. It is needless to reiterate that in spite of such intimation being given, if the other side does not take any steps after making enquiries to bring the legal representatives on record, that the only corollary which follows is that he would be party to an order or judgment which is void ab initio. Therefore, the only limitation which speaks about under the rule is due intimation alone and not beyond. It is to be noted that though such an obligation is cast on the pleader to give intimation in the event of the death of the party, however the deemed authority which the statutes sought to extend does not go beyond far any further. Thus, it does not involve the pleader to make any enquiries in regard to the legal representatives of the deceased or give any such intimation to the other side giving the particulars of the legal representatives. Therefore, there is no obligation it cast or any authority further statutorily extended to add a duty to inform the names and particulars of the legal representatives of the deceased party whom he represented.

9. In the earlier decision referred to by the learned Single Judge in Food Corporation of India's case (supra), Justice Rama Swamy (as he then was) considering the said provision and by referring to the principles laid down in Union of India v. Ramcharan : [1964]3SCR467 , for a liberal approach to be opted for it, was held:

under the amended rule, now a duty has been cast on the learned Counsel for the defendant to give an intimation. That means the intimation shall have to be given as soon as he becomes aware of the death of his party. This is not a ritualistic empty formality but brought in with result orientation backed thereby and expeditious disposal of interlocutory applications facilitating speedy disposal of original cause. When the learned Counsel for the defendant is aware of the death of the defendant, then it is expected of him to facilitate the Court to bring his LRs. within the statutory period of limitation, to give intimation of the death of the defendant. When such is the position it is the bounden duty of the Counsel to give intimation of the LRs. or to make an enquiry from the person that gave the information and furnish the same immediately either to the Court or the Counsel for plaintiff. The amendment was brought with an object to subserve the cause of the justice but not to prevent the ends of justice by mere technicalities. On such intimation being given, a further duty has been cast on the Court to give intimation to the plaintiff in the event when the plaintiff is not aware of the death earlier to such date of intimation being given. In a given case where the plaintiff himself is aware of the death, then the intimation by Counsel for defendant could not be of much avail, but in cases where the plaintiff may not be in a position, to know the date of the death, in such an event the Legislature intended that on such information furnished by the Counsel for the defendant, the Court has to give intimation of the death to the party so that the plaintiff could take expeditious steps to bring the LRs. on record.

4. The endeavour of the Court would be to kindle the flames of justice burning by rendering substantial justice on fair adjudication and dispassionate consideration of the evidence on merits. In that process the Court has to eschew adaptation of hyper-technical approach but be made (sic) the rule of procedure as hand-maid to redress the injury and mitigate failure of justice of avoidable. In this context it is

relevant to refer to the law of their Lordships of the Supreme Court laid down in Union of India v. Ramcharan : [1964]3SCR467 , which reads thus:

There is no question of construing the expression 'sufficient cause' liberally either because of the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course, the Court, in considering whether the appellant has established sufficient(sic) for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This however, does not mean that the Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement. Therefore the Court would not adopt unduly rigid or over-strict view in construing whether sufficient cause has been established or not. The Court also should not readily accept the submissions made, but has to scrutinize each case on the facts whether sufficient cause has been established or not. In this case, admittedly intimation was given on the last day of the 90th day from the date of death of the deceased defendant. Obviously he wants to avail of full period of limitation prescribed to see that the application is filed beyond 90 days. It should also be noted that the details of legal representatives have not been given. In this case on the above facts, admittedly a report was submitted to the petitioner on 15-9-1976 informing the names of the proposed respondent to be the L.Rs. entitled to represent the estate of the deceased proprietor of the first defendant firm. On the next day i.e., on 16-9-1976 an application to that effect has been filed. I am satisfied on the facts in this case that the petitioner has established sufficient cause for not bringing the L.Rs. on record within the prescribed period of limitation

.The lower Court did not approach the problem from the above perspective and thereby committed material irregularity in exercise of the powers conferred under Section 5 of the Limitation Act.

10. In the other decision referred to in Vijayalakshmi Jayaram's case (supra), the learned Single Judge of this Court considering the said provision in a situation where there was no such intimation and on the question as to whether the legal representatives can come on record, following the principles in the aforesaid decision in Food Corporation of India's case (supra), held;

Under Order 22 Rule 10-A of the Code of Civil Procedure, in the case of death of any party, it is the duty of the Counsel appearing for such party to inform the Court about the death of his client whereupon the Court will give notice of such death to the other party to take necessary steps. As the Counsel of late Surendra failed to Inform the Court about the date of death, much less furnish particulars of legal representatives, Mr. Krishna Murthy claiming to be the legal representative of the deceased respondent cannot say that the appeal has abated and that he cannot be brought on record now.

11. At this juncture, having regard to the question and the scope of the reference especially where there is no variation in the approach on the principles between the aforesaid two decisions, though the learned Single Judge expressed doubts about the correctness thereof and no other reason forthcoming as to why those principles should not be followed, we deem it more appropriate to consider the other decisions touching the very same aspect.

12. In Gangadhar and Anr. v. Shri Raj Kumar : AIR 1983 SC1202 , on the facts as mentioned therein, it was held:

The sole respondent in second appeal before the High Court died on 19-4-1980. One R.K. applied on 1-7-1981 stating that he may be impleaded as an heir and legal representative of the deceased respondent, he being the adopted son of the deceased respondent or in the alternative he is the sole legatee under the last will and testament of the deceased. Immediately on 15-7-1981 an application was moved by appellants for substitution. It was averred therein that the appellants

came to know about the death of the respondent only when the so called adopted son of the sole respondent moved an application on July, 1, 1981 stating that the respondent has died on July 1, 1981. Thereafter they made inquiries about the heirs and legal representatives of the deceased respondent and learnt that he died without leaving behind him any heir and his property has escheated to the State of Madhya Pradesh. Approaching the matter from this angle, the appellants sought permission to substitute State of Madhya Pradesh as the successor to the property of the deceased-respondent. It was submitted that the appellants did not know about the death of the deceased and they were prevented by sufficient cause from moving the application for substitution in time and therefore delay may be condoned. Abatement may be set aside, the substitution be granted. The High Court held that it is for the appellant to show when he came to know about the death of the deceased-respondent, and assign reasons why they did not come to know about it early and satisfy the Court that they had no means of knowledge and only then the appellants can get benefit of the provision of Section 5 of the Limitation Act.

Held, that the earliest knowledge about the death of the deceased-respondent can be attributed to the appellants on July, 1, 1981 when RK applied for substitution. Promptly within two weeks the application for substitution was made by the appellants. Therefore, it is satisfactorily established that the appellants were prevented by a sufficient cause in making the application for substitution within the prescribed period of limitation and the delay deserves to be condoned. The High Court was in error in refusing to set aside abatement.

13. Further the principle, idea and object behind the introduction of said rule has been reiterated to say that:

Rule 10-A which has been added in Order XXII of Civil P.C. by the Amending Act of 1976 provides that when a pleader appearing for a party to the suit comes to know of the death of the party, he shall inform the Court about it and the Court thereafter shall issue notice to the other party. In the case of an appeal, the word 'suit' has to be read as 'appeal'. This provision was introduced specifically to mitigate the hardship arising from the fact that the party to an appeal may not

come to know about the death of the other party during the pendency of the appeal but when it is awaiting its turn for being heard. This duty cast upon the Advocate appearing for the party who comes to know about the death of the party to intimate to the Court about the death of the party represented by the Counsel and for this purpose a deeming fiction is introduced that the contract between dead client and lawyer subsists to the limited extent after the death of the client.

14. In *O.P. Kathpalia v. Lakhmir Singh (dead) and Ors.* : AIR 1984 SC1744 , a case arising under the Rent Control proceedings, considering the said provision held;

Before we conclude the judgment, one aspect to which our attention was drawn may be noticed. Original landlord Lakhmir Singh died on April 9, 1978 during the pendency of these appeals in this Court. Civil Misc. Petitions Nos. 17962-69 of 1984 were moved on March 21, 1983(1984) for substitution of his heirs and legal representatives and for condoning delay, if any, in moving the petitions. The ground on which condonation of delay is sought has been set out in the petition and affidavit in support. Appellant has stated in the petition that learned Counsel for respondent Nos. 2 and 3 handed over a letter to the Registry on March 2, 1984 intimating about the death of first respondent, the original landlord. Thereafter the petition for substitution was moved on March 21, 1984 that is within three weeks from the date of the knowledge conveyed by the letter of the learned Counsel for respondent Nos. 2 and 3. The date of death of respondent No. 1 is not disputed but it is said that appellant came to know about it for the first time from the aforementioned letter. This is countered by the respondents. In our opinion there is good and sufficient reason for condoning delay and granting substitution in the facts of this case. First respondent who is dead was the original landlord and he conveyed and transferred the whole property including the suit premises to respondent Nos. 2 and 3 way back on December 21, 1959 and since then respondent Nos. 2 and 3 are the real contesting respondents. Respondent No. 1 has lost all interest in the property and the litigation concerning the property sold and conveyed by him a quarter of a century back. Coupled with this is the fact that under Rule 10-A of Order 22 a duty is cast on the pleader appearing for the deceased party to give intimation of the same to the opposite party. This duty in

this case was discharged on March 2, 1984 that is six years after the death and promptly within three weeks the petition for substitution is filed. Having regard to the cumulative effect of all these facts we are satisfied that the appellant has made out a sufficient case for condoning the delay in seeking substitution. We accordingly set aside abatement of appeal and grant substitution.

15. In *Sharafat Hussain (Dead) through LRs and Ors. v. Mohd. Shafiq and Ors.* : (1996)10SCC253 , once again considering the said provision and on the facts of that case as mentioned, held:

Abatement - Death of sole appellant on 1-12-1990 in first appeal before High Court -Intimation of the death given by Counsel for respondent on 5-8-1991 but application for substitution of LR having not been made, appeal abated and dismissed on 18-11-1991 - Application filed on 4-5-1992 seeking setting aside the abatement, condonation of delay in filing the application and bringing the LRs of the deceased appellant on record- Affidavit filed by Counsel for the deceased-appellant stating that delay occurred since he could communicate to the LRs the information issued by the respondents about the death of the appellants only on 4-5-1992 and that the LRs were unaware of the appeal filed by their father -In view of the statement of the Counsel for the deceased-appellant, held, delay in bringing LRs on record must be condoned and abatement set aside.

16. In *Rama Ravalu Gavade v. Sataba Gavadu Gavade (Dead) through LRs. and Anr.* : (1997)1SCC261 , in view of the failure to give advice on the part of the Counsel it was held:

Condonation of delay in bringing LRs on record - Appellant an illiterate farmer - His Counsel should have advised him to take necessary steps - Due to failure to render such advice, delay occasioned - In the circumstances held, delay condonable.

17. From the above decisions by the Apex Court and the consistent reiteration of the well established principle of law that procedural laws should be liberally interpreted so as to give an opportunity to the parties to have the orders on merits rather than allowing one sided orders to become final. It also emerges from these

principles that the aforesaid rule can no thus, be said to be mandatory since no penalty or other consequences are contemplated under the said rule in default of failure to comply with the same. Thus, the said provision is only a directory and enabling one so that the parties could be made alert to take appropriate steps. However, the formal intimation as such especially where there is no special provision contemplated to intimate about the particulars of the legal representatives, necessarily it follows that the other side has to make an enquiry on its own in regard to all such legal representatives and file appropriate applications to bring them on record. Thus, we hold that the apprehension expressed by the learned Single Judge about the two decisions mentioned at the inception, does not find any support especially in view of the reiteration of the very same principles in the latter decisions by the Apex Court itself. Having applied our mind, we are also of the opinion that the principles, which are being consistently followed, must hold water and continue to hold. Accordingly, we answer the reference to the effect that the decisions referred to by the learned Single Judge does not in any way require fresh consideration and further we also hold that there is no obligation cast on the part of the Advocate appearing on behalf of the deceased party to intimate or furnish any list of legal representatives of the deceased.

18. The reference is answered accordingly. The Registry is directed to post the matter before the learned Single Judge for disposal of the revision on merits.