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**Krishna Kumar Vs. Special Judge/Additional District Judge, Pilibhit and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/468952](http://sooperkanoon.com/468952)

**Court :** Allahabad

**Decided On :** Mar-08-2002

**Reported in :** 2002(2)AWC1289

**Judge :** R.B. Misra, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22; [Limitation Act, 1963](#) - Article 137; [Constitution of India](#) - Article 226

**Appeal No. :** C.M.W.P. No. 6747 of 1986

**Appellant :** Krishna Kumar

**Respondent :** Special Judge/Additional District Judge, Pilibhit and ors.

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** M.P. Singh and ;Shashi Nandan, Adv.

**Disposition :** Writ petition dismissed

**Judgement :**

**R.B. Misra, J.**

1. By this writ petition, the order dated 24.10.1981 (Annexure-1 to the writ petition) and order dated 26.10.1985 have been challenged.

2. Heard learned counsel for the petitioner as well as learned counsel for the private respondents.

3. The relevant facts necessary for adjudication of the writ petition are that the petitioner had filed a revision on 5.1.1982 against the judgment dated 24.10.1981 passed by Vth Additional Munsif, Pilibhit in Case No. 39 of 1981 arising out of Original Suit No. 323 of 1960, Sri Krishna Kumar v. Ram Kumar and Ors. Original Suit No. 323 of 1968 was dismissed for want of prosecution on 24.10.1981 and the application for setting aside the order of the dismissal of the suit was rejected by the impugned order dated 24.10.1981. One Om Kumar, opposite party in the revision application had died on 18.9.1981. i.e., prior to the filing of the revision application on 5.1.1982 and the application paper No. 19A was moved on 17.5.1982 with the allegations that due to mistake, name of Om Kumar existed in the array of the parties in the revision although he had already died on 18.9.1981 and earlier a prayer was made for necessary amendment to bring on record the legal representatives of Om Kumar. The opposite parties/private respondents in this writ petition filed the objections and pleaded that the application was liable to be dismissed because Om Kumar had already died before filing the revision and limitation for filing the revision against the heirs of Sri Ram Kumar had already lapsed. It is pertinent to mention here that Original Suit No. 323 of 1968 was filed in the Court of Munsif for relief of injunction restraining the predecessor-in-interest of the opposite parties to the revision from seeking eviction of the applicant-plaintiff in execution of ejection decree passed in Original Suit No. 53 of 1982. The ejection decree was passed against the father, mother and elder brother of the applicant-plaintiff. The decree of the ejection was even confirmed by this Court in Second Appeal and it was claimed by the learned counsel for the opposite parties that the decree of eviction has been duly executed and the possession of the disputed property was obtained long ago, and this claim on behalf of the opposite parties was not disputed by applicant-revisionist.

4. It has been observed by the Special Judge/ Revisional Authority in its order dated 26.10.1985 which also noted the contentions of the petitioner that the provisions of Order XXII. C.P.C. was not applicable to the revision proceedings and, therefore, there could not be an abatement of revision application and merely

because by mis-description, a dead person was mentioned as one of the parties in the array of parties of the revision application, it could not be said that the revision application is barred by limitation for seeking the required amendment within time. The contention of the opposite parties herein were also noted by the Revisional Authority that the deceased Om Kumar was a necessary party to the revision application and amendment accordingly for bringing on record the legal representatives of the deceased beyond the period of limitation, makes itself the revision barred by time and the application for substitution could not have been allowed.

5. it has also been noted by the revision authority that, admittedly, the application of amendment or substitution of legal representative of Om Kumar was recorded after expiry of the period of limitation provided for a revision application and Om Kumar was one of the successor-in-interest of the decree-holder and was no doubt, a necessary party to these proceedings also and when he had died prior to the Institution of the revision application, the filing of the revision application, without making his legal representatives as party to the revision proceedings, had the effect of making the revision incompetent and also that the revision against the proposed legal representatives of the deceased was barred by time.

6. It has also been noted by the revisional authority/ Additional District Judge in its order dated 26.10.1985 that the contention of the private respondents that Krishan Kumar. herein petitioner had not alleged in the affidavit paper No. 37/C that he was not aware of the death of Om Kumar, therefore, this ground for failure to apply in time for substitution of the legal representatives of Om Kumar was not to be acknowledged in the peculiar facts and circumstances when Om Kumar successor-in-interest of the decree holder of ejectment decree being a co-landlord in his own rights. The principle of substantial representation as indicated in *Subramania Pillai v. Masterli* : AIR1976 Mad303 . relied by the learned counsel for the petitioner herein before the revisional authority was not treated 'to be applicable in the present case. The revisional authority has also distinguished the applicability of *Nageshwar Upadhaya and Ors. v. Chandra Charuman Tiwari and Ors.* : AIR1952 All698 , as well as applicability of *Gyan Dutt and Ors. v. Sadanand Lal and Ors.* : AIR1930 All163 .

7. The petitioner has contended before this Court that :

(i) According to the Article 137 of the Indian Limitation Act, the prescribed period of limitation is 3 years and in view of which the Court below has committed illegality in holding that the application submitted by the petitioner for bringing on record the heirs of the deceased party was barred by limitation,

(ii) No period of limitation is provided in respect of revisions and as such, the provisions of Article 137 of the Indian Limitation Act would be clearly attracted.

(in) The provisions of Order XXII. C.P.C. are not applicable to proceedings in a revision and the period of limitation of 90 days as provided by Article 120 would not be attracted and the Court below has committed illegality in ignoring the provisions of Article 137 of the Limitation Act.

8. The contention of the petitioner that the period of limitation prescribed by Article 137 would be applicable to revisions is fortified by a Full Bench decision of this Court in the case of Chandra Deo Pandey and Ors. v. Sukhdeo Rai and Ors., 1972 ALJ 603, where this Court has held that the period of limitation for substitution of legal heirs in revision is three years under Article 137.

9. In the light of the above judgment, it has been contended on behalf of the petitioner that the above orders under challenge are liable to be set aside and the matter deserves to be remanded back to be decided by revisional authority on merits of the case.

10. It may be pertinent to read Article 181 of old Limitation Act of 1908 and Article 137 of the new Act (XXXVI of 1963).

(i) By the decision of the Supreme Court in Bombay Gas Co. v. Gopal Bhiva : (1963) IILLJ608SC , wherein it was held that Article 181 prescribed three years' period of limitation in respect of applications under the Code of Civil Procedure for which no period of limitation was provided elsewhere.

(ii) Substantially the language of Article 181 of the old Limitation Act is pari materia with the language of Article 137 of the new Limitation Act. If Article 181 applies to

applications under the Code of Civil Procedure, I see no reason why Article 137 of the new Limitation Act should not apply to applications under the Code of Civil Procedure. It may or may not apply to applications under other Acts, but there can be no manner of doubt about its applicability to applications under the Code of Civil Procedure.

(iii) Even if there be some doubt about the applicability of Article 137 to applications under other Acts, about which no opinion is expressed, there is not the slightest doubt that Article 137 would cover applications under the Code of Civil Procedure. The consensus opinion of the various High Courts has been that Article 181 of the old Limitation Act applied to the applications under the Code of Civil Procedure. Article 137 of the new Limitation Act should also be given a similar meaning. Article 137, being a residuary article, must be construed ejusdem generis with the other articles dealing with applications. As most of the other articles deal with applications under the Code of Civil Procedure, Article 137 should also be held to apply to applications under the Code of Civil Procedure. In *Union of India v. Seth Shanti Swarup*, AIR 1966 All 530, the Division Bench distinguished the Supreme Court decision in *Bombay Gas Company v. Gopal Bhiva* (supra) on the ground that the application in that case was not an application under the Code of Civil Procedure but it was an application under Article 133 of the Constitution.

(iv) The application for substitution of heirs in revision is an application under Section 151 of the Code of Civil Procedure can admit of no doubt, the period of limitation for bringing the heirs of the deceased to be three years under Article 137 of the New Limitation Act. The application for substitution was filed within three years of the death of opposite party No. 10. so there is no question of abatement or of condonation of delay.

(v) 'Article 181 prescribed three years' period of limitation in respect of applications under the Code of Civil Procedure for which no period of limitation was provided elsewhere.'

11. Since it has been noted by the revisional authority in its order dated 26.10.1985 that the ejectment decree had already been passed against the father,

mother and elder brother of the applicant-plaintiff and the decree of ejection passed in suit was also confirmed by this Court in the second appeal and the decree of eviction has duly been executed and the possession of the disputed property was obtained long ago therefore, interest of justice. I do not feel to remand back the case for adjudication at this belated stage again to the revisional authority as it has already concluded the matter, therefore, this Court is not inclined to invoke its jurisdiction under Article 226 of the [Constitution of India](#).

12. Therefore, the writ petition is dismissed.

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