

Jagannath and ors. Vs. Additional Commissioner and ors.

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SooperKanoon Citation : sooperkanoon.com/476416

Court : Allahabad

Decided On : May-10-2004

Reported in : 2004(4)AWC3012; (2004)2UPLBEC1924

Judge : Arun Tandon, J.

Acts : [Limitation Act, 1963](#) - Sections 5; [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rule 4

Appeal No. : Civil Misc. Application No. 106120 of 2004 in Civil Misc. Substitution Application No. ... of 2000 I

Appellant : Jagannath and ors.

Respondent : Additional Commissioner and ors.

Advocate for Def. : Piyush Shukla, ;Nahood A. Moonis, ;Murtaza Ali and ;V.K. Shukla, Advs. and S.C.

Advocate for Pet/Ap. : Sankatha Rai, Adv.

Judgement :

Arun Tandon, J.

1. Heard Sri Sankatha Rai, learned Counsel for the applicant-petitioners, Ms. Nahood A. Moonis, learned Counsel for the respondent Nos. 3, 5, 6 and Sri Piyush

Shukla, learned Standing Counsel for the respondent Nos. 1, 2 and 4.

2. This application being Civil Misc. Application No. 106120 of 2000, has been filed under Section 5 of the Limitation Act for condoning the delay in filing of the substitution application as well as for setting aside the abatement. In Paragraph No. 4 of the affidavit filed in support of the present application, it has been stated that the deponent came to Allahabad on 16th November, 2000 when he was informed that the writ petition has been dismissed and his Counsel also instructed him to supply necessary information with regards to the legal heirs of respondent No. 3 who had since expired.

3. It is thereafter stated that, the petitioners belong to rural area and were not informed about the substitution of legal heirs of respondent Nos. 2 and 3. The petitioners were informed about the death of respondent No. 3 in May, 1991. It has further been stated that the petitioners were unaware of the proceedings to be taken for bringing on record the legal heirs of the deceased respondent No. 2 and in such circumstances, receiving the information from the Counsel. The deponent filed substitution application through his Counsel after collecting the necessary information. The present application has been filed on 14th December, 2000 before this Court. A counter affidavit has been filed in reply to the allegations made in the said Section 5 application by the grand-son of the respondent No. 3 stating that the said respondent had expired in the year 1991. Absolutely, no allegations with regards to mala fide or negligence have been made in the said counter affidavit. This Court on 9th April, 2004 passed an order requiring the applicant to file such better affidavit as he may be advised with regards to the delay in filing of the substitution application. In compliance thereof the supplementary affidavit has been filed on 20th April, 2004 Wherein it has been stated that the exact date of the death of respondent No. 3 was disclosed by means of the supplementary affidavit filed on behalf of the legal heirs of respondent No. 3, the petitioners, for the first time, obtained knowledge of the exact date of the death of the respondent No. 3 as 10th April, 1985. It has further been stated in Paragraph 8 of the said affidavit that the petitioners were unaware of the proceedings and the limitation prescribed for bringing on record legal heirs of the respondent No. 3 by means of the substitution application. It has further been stated that the provisions of Order XXII,

Rule 4 of the Code of Civil Procedure, are not strictly applicable to proceedings under Article 226 of the [Constitution of India](#).

4. Reliance has been placed upon the judgments of the Hon'ble Supreme Court reported in AIR 1985 SC 606, 1997 (1) SCC 261, 2002 ACJ 2367 and 1996 ALR (27) 217. On the strength of the aforesaid judgments, it is contended that sufficient grounds as contained in Section 5 of the Limitation Act must be given a liberal constructions and explanation furnished, should be accepted. Specifically when no negligence or mala fide has been alleged.

5. On behalf of the respondents, it is contended that the substitution application has not been filed within reasonable time; there is no sufficient explanation furnished by the applicants to condone the delay in filing of the substitution application; the application for condoning the delay is liable to be rejected and the writ petition is liable to be dismissed, accordingly. Reliance has also been placed on behalf of the respondent upon the judgment of the Hon'ble Supreme Court reported in 1996 (1) ALR 217. In the said judgment the Hon'ble Supreme Court has affirmed the judgment of the High Court dismissing the writ petition for want of substitution as there was delay of nearly three years. Similarly, reference has also been placed on the judgment of the Hon'ble Supreme Court reported in AIR 1981 SC 1921 wherein the Hon'ble Supreme Court had rejected the application for condoning the delay as no reasons were assigned for the same in the application filed for condonation of delay. According to the learned Counsel for he respondent there was hardly delay of three months in the judgment referred to above and in absence of any reason having been assigned the Supreme Court did not accept the application for condonation of delay.

6. I have heard learned Counsel for the parties and have gone through the records of the present writ petition.

7. So far as the law with regards to the condonation of delay in filing of the substitution application as well as for setting aside the abatement is concerned, the Hon'ble Supreme Court in the judgment reported in 2002 ACJ 367, (Ram Nath Sao @ Ram Nath Sahu and Ors. v. Gobardhan Sao and Ors. has laid down that the words 'sufficient grounds' under Section 5 of the limitation Act should receive

liberal constructions so as to advance substantial Justice. It has been specifically held in Paragraph No. 7 reads as follows :

'The expression 'sufficient cause' within the meaning of Section 5 of the [Limitation Act, 1963](#) (hereinafter referred to as 'the Act') Order XXII, Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'the Code') as well as similar other provisions and the ambit of exercise of powers thereunder have been subject matter of consideration before this Court on numerous occasions. In the case of *The State of West Bengal v. The Administrator, Howrah Municipality and Ors.*, (1972) 1 Supreme Court Cases 366, while considering scope of the expression 'sufficient cause' within the meaning of Section 5 of the Act, this Court laid down that the said expression should receive a liberal construction so as to advance substantial Justice when no negligence or inaction or want of bona fide is imputable to a party.'

8. Similarly, the Hon'ble Supreme Court, in the case of litigants belonging to the rural back ground, has held in the judgment reported in AIR 1985 SC 606, *Ram Sumiran and Ors. v. D.D.C. and Ors.* as follows :

'The only ground on which the High Court has dismissed the writ petition is that it has abated as a whole against respondent Nos. 4 and 5 since it abated against respondent No. 5 on account of the legal representatives of respondent No. 5 not having been brought on record within a period of 90 days after the death of respondent No. 5 which occurred on 21.11.1976. It is true that no steps were taken by the appellants for bringing the legal representatives of the deceased respondent No. 5 on record for about 6 years even though according to respondent No. 4 the appellants knew about the death of respondent No. 5. But merely because no application was made by the appellants for bringing the legal representatives of the deceased respondent No. 5 on record we do not think that in the circumstances of the present case that would be a valid ground for refusing to grant the application of the appellants for setting aside the abatement and bringing the legal representatives of the deceased respondent No. 5 on record because the appellants are admittedly from the rural area and in a country like ours where there is so much poverty, ignorance and illiteracy, it would not be fair to

presume that everyone know that on death of a respondent, the legal representatives have to be brought on record within a certain time. The ends of Justice require that the application for bringing the legal representatives of the deceased respondent No. 5 should have been granted. We accordingly allow the appeal, set aside the order of the High Court and direct that the abatement, if any, shall be set aside and the legal representatives of deceased respondent No. 5 shall be brought on record and the writ petition shall be remanded to the High Court for disposal according to law.....'

9. The aforesaid view has again been affirmed by the Hon'ble Supreme Court in the judgment reported in 1997 (1) Supreme Court Cases 261, Rama Ravalu Gavade v. Sataba Gavade, Para-6, it has been held as follows :

'In view of the fact that the appellant is an illiterate farmer, the appropriate steps should have been taken by the Counsel for the appellant on proper advice. In view of the fact that the Counsel has not properly advised the appellant to take necessary steps, delay had occasioned. The High Court, therefore, was not light in refusing to condone the delay. It is brought to our notice that no application has been filed for setting aside the abatement and the appeal also stands abated. In view of the fact that the delay now stands condoned the abatement also stands set aside.'

10. In view of the aforesaid settled legal position and specifically in view of the fact that the provisions of Order XXII, Rule 4 of the Code of Civil Procedure are not strictly applicable to the proceedings under Article 226 of the [Constitution of India](#), this Court should adopt the procedure, which is in furtherance of interest of Justice. In the facts of the present case, the delay in filing of the substitution application is sufficiently explained especially in view of the rural back ground of the petitioners and the Application No. 106120 of 2000 is, accordingly allowed.

11. Let the legal heirs of respondent No. 3 be substituted in the array of parties and necessary corrections be carried out within three days.

12. List this matter in the next cause list.

