

Nanda and ors. Vs. Lachhman and ors.

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Court : Madhya Pradesh

Decided On : Sep-09-1981

Reported in : AIR1982MP8

Judge : M.D. Bhatt, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rules 4, 9; [Limitation Act, 1963](#) - Sections 5

Appeal No. : Second Appeal No. 314 of 1970

Appellant : Nanda and ors.

Respondent : Lachhman and ors.

Advocate for Def. : B.L. Ranecha, Adv.

Advocate for Pet/Ap. : S.D. Sanghi, Adv.

Judgement :

M.D. Bhatt, J.

1. Order in this appeal would equally govern the disposal of the Civil Appeals Nos. 315 of 1970 and 316 of 1970, inasmuch as, in all these three appeals, where the respondents-plaintiffs are exactly the same, similar point is involved, pertaining to the death of one of the respondents-plaintiffs i. e. Badrilal, and the effect of such

death on these pending appeals.

2. Respondents-plaintiffs had filed the three suits against different sets of defendants in the matter of their right and title to the respective disputed lands against the respective sets of defendants. All the suits were decreed by the trial Court; and the respective appeals preferred by the defendants were dismissed by the lower appellate Court. Thereafter, the defendants filed the present second appeal and so also the other two.

3. During the pendency of these three appeals, Badrilal, one of the respondents-plaintiffs, expired about 5 or 6 years back from .now, with no steps taken so far by the appellants-defendants to bring the L. Rs. of the deceased respondent-plaintiff Badrilal, on record. The appellants-defendants, in each of these three appeals, have filed four applications,-- one, under Order 22, Rule 9, C. P. C. for setting aside the abatement, the other, under Order 22, Rule 4, C. P. C. for bringing the L. Rs. on record, the third, under Section 5 of the Limitation Act for condoning the delay in filing the two applications under Order 22, Rule 9, C. P. C. and Order 22, Rule 4, C. P. C.; and the last, under Order 32, Rule 3, C. P. C. for appointment of a guardian of the proposed two minor L. Rs. All these applications were vehemently opposed by the learned counsel of the remaining respondents-plaintiffs on record, in the light of the facts as mentioned in these applications. Arguments on both sides were heard.

4. The learned counsel for the appellants-defendants, relying on AIR 1979 Cal 353, Abdul Latiff v. Fazal Ali, has urged before me that the delay on the part of appellants-defendants in filing the applications under Rules 4 and 9 of Order 22, C. P. C. was bona fide, inasmuch as, the appellants being village-folk, were ignorant about the legal procedure as to, whether or not, the L. Rs. are necessarily to be brought on record, on the death of one of the parties.

5. On considering the arguments on both sides, the appellants-defendants' all these four applications do not deserve to be allowed on the alleged ground, as put forth in their applications in the matter of the cause for delay. It may, at first, be mentioned that all the four applications which have been filed on the appellants' side, have been moved, only by one of the appellants i. e. the appellant-defendant

Nandram. As for the cause of delay, it has been mentioned in paras 2 and 3 of his application under Order 22, Rule 9, C. P. C. that although the respondent-plaintiff Badrilal had died 5 to 6 years back, leaving behind him his certain L. Rs., he himself, being a village agriculturist, had no knowledge regarding the legal position that L. Rs. of the deceased are necessarily to be brought on record of the case, and only when he received his counsel's letter dated 12-8-81 on 17-8-81, he contacted his counsel; and on his advice, filed the requisite applications in the matter of the L. Rs. It is, therefore, urged by the said appellant-defendant Nandram and so also by the appellants' learned counsel that the delay was bona fide; and as such, there was just and sufficient cause for condoning the delay in the matter of setting aside the abatement and also in the matter of bringing the L. Rs. on record in time. In AIR 1964 SC 215, Union of India v. Ram Charan, their Lordships of the Supreme Court have laid down certain guidelines for determining what is 'sufficient cause' for purposes of Rule 9, Order 22, C. P. C. There is a consistent view of certain High Courts, contrary to the one of the Calcutta High Court which has been cited before me, to the effect that mere ignorance of law without anything more, will not constitute sufficient cause. ILR (1954) 4 Raj 351, Hukum Singh v. Bhanwar Singh; 1954 Madh Bha LJ 1454 (HCR), Mohanlal v. Surajmal and AIR 1929 Nag 74, Nandu v. Bhuwanoo, are clear authorities for the said view which I am inclined to follow in the present circumstances of the case. Calcutta case (supra) is one. which related to unsophisticated illiterate village women living in Pardah (appellants Nos. 3 and 4) and to two others (appellants Nos. 1 and 2) who were semi-literate villagers living in the extreme interior part of the District 24-Parga-nas. Such does not appear to be the case here. It has simply been stated in the Instant case that the appellant-defendant Nandram was a village agriculturist. It is nowhere stated that he was illiterate or semi-literate. Besides, apart from this, appellant-defendant Nandram, there were three other appellants-defendants regarding whom, nothing has been stated as to whether, they were literate or not, and further whether these appellants were also equally ignorant about the legal position in the matter of bringing the L. Rs., on record, of one deceased respondent-plaintiff. From the applications which have been filed, one thing is clear that the appellants had full knowledge about the death of the respondent-plaintiff No. 3 Badrilal about 5 to 6 years, when he had actually died.

The factum of their such knowledge is, thus, not a matter of any controversy. The only controversy raised by the appellants is that the appellant-defendant Nandram had no knowledge of the legal position that the L. Rs. of the deceased party are to be brought on record. These appellants had, as their counsel, a very senior and reputed lawyer. It does not stand to reason that the appellants could not have contacted their counsel any time during all these years of the pending appeals. The mere circumstance that the appellants were ignorant of law regarding the bringing of L. Rs. of the deceased, on record, by itself, alone, cannot be just and sufficient cause for condoning the delay. If such bare circumstance is accepted on its face value, as just and sufficient cause for condoning the delay, then, the whole scheme of the various rules of Order 22, C. P. C. would be frustrated and rendered valueless; and there would hardly a suit or appeal where the effect of abatement would have any play or any practical significance, inasmuch as, any defaulting party whatsoever, would, then, be able to come forward with the plea that he was unable to move the necessary applications within the prescribed time for bringing the L. Rs. on record or for setting aside the abatement because of his ignorance of law. Pure and simple ignorance of law, by itself, cannot be an excuse and justification, much less sufficient justification for condoning the delay. As such, the appellants' applications under Order 22, Rule 9 and so also under Order 22, Rule 4 and S. 5 of the Limitation Act, deserve to be outright rejected. Consequently, the last application under Order 32, Rule 3, C. P. C. would equally become infructuous.

6. In the result, thus, rejecting the four applications of the appellants-defendants it is ordered that the defendants' present appeal and so also the other two, stand abated; for, not bringing the L. Rs. of the deceased respondent-plaintiff Badrilal, on record, in time, and there being no just and sufficient cause for setting aside the abatement or condoning the delay therefor. Parties to bear their respective costs in the present appeal and so also in the other two Counsels' fee as per schedule, if certified.