

Manorama Vs. Chittar and ors.

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Court : Madhya Pradesh

Decided On : Aug-09-1989

Reported in : AIR1990MP112; 1990MPLJ300

Judge : K.L. Shrivastava, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rule 9; [Limitation Act, 1963](#) - Sections 5 - Schedule - Article 121

Appeal No. : M.C.C. No. 311 of 1986

Appellant : Manorama

Respondent : Chittar and ors.

Advocate for Def. : S.D. Snaghi and ;N.K. Sanghi, Adv.

Advocate for Pet/Ap. : Brajesh Pandya, Adv.

Disposition : Application dismissed

Judgement :

ORDER

K.L. Shrivastava, J.

1. This is an application under Order 22, Rule 9 of the Civil P.C., 1908 (for short 'the Code') for setting aside abatement of appeal. An application under Section 5

of the [Limitation Act, 1963](#) (for short 'the Act') for condonation of delay in filing the application for setting aside abatement of appeal has also been filed.

2. Circumstances giving rise to the applications are these. Second Appeal No. 389 of 1974 preferred by Chandrashekhar the father of the petitioner Smt. Manorama wife of Jagdish Chandra was dismissed on 17-7-1985 as having abated, the said Chandrashekar having died on 15-1-1985.

3. The application for setting aside the abatement was filed on 29-8-1986 and therein it has been stated that Chandrashekar was resident of a village in district Dhar and the applicant resides in Indore and had no earlier knowledge of any case by her father.

4. In the application under Section 5 of the Act it has been stated that the petitioner came to know about the abatement on 29-8-1986 and in the circumstances the delay in applying for setting aside the abatement deserves to be condoned.

5. This Court required the Civil Judge Class I, Dhar to submit his finding on the sufficiency of the cause for the delay. The finding dated 13-2-1989 is against the petitioner.

6. Learned counsel for the petitioner placing reliance on the observations in paragraph 6 of the decision in Sital Prasad's case, AIR 1985 SC 1 has urged that the delay deserves to be condoned and the application under Order 22, Rule 9 of the Code must be allowed.

7. The contention of the learned counsel for the non-applicant No. 1 is that unless the party seeking condonation of delay under Section 5 of the Act pleads and proves the cause as alleged and its sufficiency, the Court cannot allow the application. In support of his submission he has placed reliance on the decision in Union of India v. Ram Charan, AIR 1964 SC 215.

8. The point for consideration is whether the applications deserve to be allowed.

9. In the decision in Sital Prasad's case (AIR 1985 SC 1) (supra) one Mehendra Kumar claiming to be the son of the deceased appellant had in 1978 moved the necessary applications including the one for setting aside the abatement, the appellant having died in 1976. The Supreme Court observed that the High Court must examine the material collected by the trial Court and must come to its own conclusion and cannot adopt the approach of a Court exercising revisional jurisdiction. Observing that in a traditional rural family the father may not have informed the son about the litigation and that rules of procedure are designed to advance justice and should be so interpreted and not to make penal statutes for punishing erring parties, and set aside the order passed by the High Court.

10. In the decision in Union of India v. Ram Charan (AIR 1985 SC 1) (supra) with reference to Order 22, Rule 9 of the Code (which applies appeals (vide Order 22 VII CPC)) it has been pointed out that there is no question of construing the expression 'sufficient cause' liberally. It has, however, been observed that the Court need not be over-strict in accepting such proof of the suggested cause as it would accept for holding certain facts established, one of the reasons being that the question does not relate to the merits of the dispute between the parties. According to the decision this, however, does not mean that the Court should readily accept whatever is alleged to explain away his default. It has to scrutinize the allegation and it would be fully justified in considering the merits of the evidence led to establish the cause for the default in applying within time (90 days from date of death: Article 120 of the Act) for impleading of the L.Rs. of the deceased or for setting aside the abatement. It has been pointed out that mere belated knowledge of death of opposite party is not sufficient and reasons leading to the not knowing of death within reasonable time must be stated.

11. Learned counsel for the non-applicant No. 1 has further urged that the applicant not having herself entered the witness box it cannot be held that she had no earlier knowledge of the abatement of the appeal. In support of his submission he has placed reliance on the decision in Nandlal Goverdhandas's case, AIR 1981 Bom 1 which is under the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) in which it has been pointed out that bona fide requirement is the state of mind and must, therefore, be proved by the person who requires the

premises. It has further been pointed out that landlord can delegate the authority to conduct the case but cannot delegate the duty to depose.

12. In the decision in Bhagirathibai's case, 1965 MPLJ(N) 46 with reference to Order 9, Rule 9 and Rule 13 of the Code pointing out that the term 'sufficient cause' has not been defined in the Code, it has been observed that it is a question of fact depending upon the circumstances of each case. According to the decision no party should be deprived of a hearing unless there has been something equivalent to misconduct or gross negligence on his part and too strict a standard cannot be expected from a litigant and he should not be denied an opportunity of hearing by a strict interpretation of the words 'sufficient cause'. In this very connection reference may also be usefully made to the decisions in Girish Kumar's case, 1976 MPRCJ(N) 27; Kher Singh's case, 1981 Jab LJ (SN) 5 and GirjaDevi's case, 1982 Jab LJ 51 : (AIR 1982 NOC83).

13. In the decision in Kher Singh's case (supra) it has been pointed out that where misconduct, gross negligence or ulterior motive is not shown a chance should be given to the party to meet the case on merits.

14. Under Order 22, Rule 9 of the Code abatement dismissal has to be set aside by the Court only if it is proved that the party was prevented by any sufficient cause. It is for the applicant to prove absence of want of care and negligence on his part. The application cannot be allowed or dismissed by taking recourse to conjectures.

15. Under Article 121 of the Act an application to set aside abatement has to be filed within 60 days from the date of the abatement. Under Section 5 of the Act which applies by virtue of Order 22, Rule 9(3) of the Code the Court has the discretion to admit an application filed after the prescribed period only if the applicant satisfies it that he had sufficient cause for not making the application within such period.

16. In the instant case on a perusal of the material on record I find that in the application under Order 22, Rule 3 and 9 of the Code, typed date is of July, 1986 and after erasing the same 29-8-86 has been entered. The same position obtains

in the application under Section 5 of the Act. In support of the application the only witness examined is Rajesh Advocate (A.W. 1) who is the son of the petitioner. In his evidence he has nowhere stated about the date on which the applicant for the first time learnt about the abatement of the appeal. From a combined reading of his evidence in paragraphs 2 and 4 of his deposition it is gathered that the petitioner had on 17-4-86 filed objection in the Court of Tahsildar that mutation should not be done as she is moving the Court against the abatement of appeal.

17. Further as the petitioner has not herself entered the witness-box it cannot be said as to when she in fact came to know about the abatement of the appeal and in the absence of this it is not possible to hold that there is sufficient cause for, condoning the delay in filing the application for setting aside abatement.

18. As a result of the foregoing discussion the application under Section 5 of the Act deserves to be dismissed and is accordingly dismissed. The application for setting aside abatement is also, consequently, dismissed as statute-barred. In the circumstances, parties are left to bear their own costs as incurred.