

Dolatram and ors. Vs. Kishan and ors.

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Court : Madhya Pradesh

Decided On : Sep-24-1999

Reported in : 2000(1)MPHT285

Judge : S.P. Khare, J.

Acts : [Limitation Act, 1963](#) - Sections 5; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 22, Rule 9, 9(2) and 9(3)

Appeal No. : Second Appeal No. 589/80

Appellant : Dolatram and ors.

Respondent : Kishan and ors.

Advocate for Def. : S.D. Sanghi, Sr. Adv. and ;S. Upadhyaya, Adv.

Advocate for Pet/Ap. : P.K. Saxena, Sr. Adv. and ;Mohanti, Adv.

Disposition : Application allowed

Judgement :

ORDER

S.P. Khare, J.

1. The application of the appellant under Order 22 Rule 9 C.P.C., read with Section 5 of the [Limitation Act, 1963](#) is being decided by this order.

2. Respondents No. 1 Kishan died on 27-7-1993 and respondent No. 2 Dayaram died on 8-8-1993 during the pendency of this second appeal. Learned counsel for the other respondents brought it on record by an application submitted on 8-5-1995 regarding the death of the respondents No. 1 and 2 on the dates mentioned above. The appellant submitted the application under Order 22 Rule 9 C.P.C., read with Section 5 of the [Limitation Act, 1963](#) on 3-8-1996. Thus there was delay of 15 months from the date it was brought on record the fact of the death of the two respondents. The trial Court also on a direction from this Court recorded a finding in the report dated 30-7-1997 that the appellant had the knowledge of the death of these respondents in the year 1993.

3. The appellant amended his original application under Order 22 Rule 9 C.P.C, and pleaded that the appellant is a farmer in a village and for the first time he came to know from the letter dated 30-7-1996 that it is necessary under law to bring the legal representatives of the two deceased-respondents on record.

4. It has been argued on behalf of the appellant that his application for setting aside the abatement should be considered liberally as the appellant is a rustic villager. Reliance has been placed on two decisions of the Supreme Court in Sital Prasad v. Union of India, AIR 1985 S.C. 1 and State of Haryana v. Chandra Mani, AIR 1996 S.C. 1623. On the other hand it has been contended that the application for setting aside the abatement is highly belated and the ignorance of law cannot be an excuse for submitting such an application at such a late stage. It is also submitted that a valuable right has accrued in favour of the legal representatives of the deceased-respondents on default of the appellant to bring the legal representatives on record and that right cannot be lightly disturbed. The decision of the Supreme Court in State of Gujarat v. Sayed Mohd., AIR 1981 S.C. 1921 has been relied upon.

5. After considering the arguments of both the sides in light of the interpretation of Order 22 Rule 9 C.P.C., read with Section 5 of the [Limitation Act, 1963](#) this Court is of the opinion that the application for setting aside the abatement should be allowed. Order 22 Rule 9 (2) C.P.C, provides that the abatement can be set aside if it is proved that the plaintiff or the appellant 'was prevented by any sufficient

cause from continuing the suit'. Sub-rule (3) of Rule 9 of Order 22 C.P.C. further provides that the provisions of Section 5 of the [Limitation Act, 1963](#) shall apply to the applications under Sub-rule (2). The expression 'sufficient cause' should be so construed as to advance substantial justice and it should not be construed strictly. These words should be construed liberally. The question whether there is 'sufficient cause' is essentially a question of fact in each case. The rule that ignorance of law merely without anything more does not constitute sufficient cause is not inflexible. In *State of Haryana v. Chandra Mani*, AIR 1996 S.C. 1623 the Supreme Court was dealing with the expression 'sufficient cause' in Section 5 of the [Limitation Act, 1963](#). After referring to the various earlier decisions it has been observed that expression 'sufficient cause' should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression 'sufficient cause' should receive a liberal construction. There should not be want of bonafides. There should be no negligence. The question whether or not there is 'sufficient cause' for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case. It has also been observed that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. The expression 'sufficient cause' is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves the ends of the justice that being the life-purpose for the existence of the institution of Courts. There should not be a pedantic approach. It is further observed that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. The observations of the Supreme Court while interpreting the words 'sufficient cause' in Section 5 of the [Limitation Act, 1963](#) are equally applicable to the construction of the similar words finding place in Order 22 Rule 9 C.P.C.. In *Sital Prasad v. Union of India*, AIR 1985 S.C. 1 the Supreme Court was dealing with Order 22 Rule 9 C.P.C. and observed that rules of procedure are designed to

advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. Earlier decision in Bhagwan Swaroop v. Moolchand, AIR 1983 S.C. 355 was referred.

7. The decision of Supreme Court in State of Gujarat v. Sayed Mohd., 1981 S.C. 1921 on which reliance was placed by the learned counsel for the legal representatives of the deceased-respondents in the present case is distinguishable. That was not a case of a village farmer who failed to bring the legal representatives of the deceased-respondent on record. That was a case of the State Government which failed to bring the legal representatives of the deceased-respondent on record. After it was brought to the notice of the counsel appearing on behalf of the State regarding the date of death of the respondent. In that case no reason was assigned for failure to submit the application in time.

8. Apart from the decisions cited at the Bar during the course of the hearing it would be useful to make reference to the recent judgment of the Supreme Court in Rama v. Sataba, (1997) 1 S.C.C. 261 in which the appellant was an illiterate farmer and there was delay on his part in bringing legal representatives on record. In that case the counsel for the appellant did not advise him to take the necessary steps to bring the legal representatives on record in time. The Supreme Court observed : '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 right in refusing to condone the delay'.

9. In the present case the fact of the death of the respondents No. 1 and 2 was brought on record and it was the duty of the learned counsel for the appellant to communicate it to his client that the legal representatives of the two respondents are to be brought on record within time. The case of the appellant is that for the first time he came to know on 30-7-1996 from the letter of Shri Gandhi, Advocate that it is necessary under law to bring the legal representatives of the deceased-respondents on record and therefore, the application under Order 22 Rule 9 C.P.C., read with Section 5 of the [Limitation Act, 1963](#) was submitted by him on 3-

8-1996. The explanation of the appellant is reasonable and plausible and it should be accepted. As already observed 'ignorantia juris non excusat' is not an inflexible rule when the Court is dealing with the case of a rustic farmer. The solution of the problem which has arisen should be found out by approaching the case from his stand point.

10. In view of the above discussion the application of the appellant under Order 22 Rule 9 C.P.C., read with Section 5 of the [Limitation Act, 1963](#) is allowed and legal representatives of the deceased-respondents No. 1 and 2 are permitted to be brought on record.

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