

Mohanlal Vs. Temalgdol

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Court : Madhya Pradesh

Decided On : Mar-27-2000

Reported in : 2000(4)MPHT469

Judge : J.G. Chitre, J.

Appeal No. : Second Appeal No. 121/83 and I.A. Nos. 49, 50 and 52 of 2000

Appellant : Mohanlal

Respondent : Temalgdol

Advocate for Def. : S.S. Garg, Adv.

Advocate for Pet/Ap. : Anita Sharma, Adv.

Judgement :

ORDER

J.G. Chitre, J.

1. Vide these I.As. a prayer has been made for condoning the delay, setting aside the abatement and bringing the L.Rs. of sole appellant-deceased on record. Shri Garg prayed for time to file the reply to these applications. Smt. Sharma vehemently opposed it by submitting that on two occasions the time has been sought by the counsel for respondents and even before this Court on 24-1-2000 time was sought. She pointed out that sufficient opportunity has been given to the

respondents to file reply to these applications. However, the replies have not been submitted. Shri Garg submitted that he wants to contact the concerned clients and, therefore, he reiterated the prayer for adjournment and in the alternative submitted that the applications be dismissed because the process of making a prayer for condonation of delay setting aside the abatement and bringing the L.Rs. of deceased sole appellant on record has been very much delayed. He pointed out that delay is of five years. Mrs. Sharma submitted that when a routine letter was issued from the office of counsel for appellant, the son of deceased appellant Mohanlal contacted counsel for appellant and informed that the sons were not knowing that any appeal filed by their father is pending before the High Court. At that time only counsel appearing for appellant got the information about the death of sole appellant which took place in the year 1995. She further submitted that thereafter immediately the steps were taken and immediately after the winter vacation was over, the applications were submitted on 3-1-2000. She submitted that in view of all the circumstances the delay has been well explained and, therefore, the delay needs to be condoned, abatement needs to be set-aside and the L.Rs. of deceased need to be brought on record.

2. Each and every case exhibits different set of facts and therefore, the Court has to be attentive in considering all such facts being circumspective and adopting a reasonable approach. The Court has to gather the necessary material for coming to a reasonable conclusion by even taking the help of experience of human life of city dwellers as well as of rustic villagers. Even many city dwellers do not have the knowledge of pendency of the litigation and the things to be done in context with that so far as legal aspect is concerned. Even many educated persons do not know that after the death of the litigant the process of abatement starts. Leave aside, praying for condonation of delay, even persons having concern with arena of litigations are not inquisitive for that adequately. They also fall pray to such defaults. In the present case a routine letter was sent by the office of the counsel for appellant and in response to that the son of sole appellant who had expired in the year 1994 approached the advocate and informed that the sons of said deceased appellant were not having any knowledge of the pendency of this appeal. At that time, as averred, the counsel appearing for appellant got the information about the death of sole appellant. After that, the process of taking

necessary steps in context with the death of sole appellant started.

3. It is true that by defaults of litigants the adversories acquire a legal right. It is also true that Court should be serious in dislodging that but a rider has always been provided subject to the reasonable satisfaction of the Court. Procedural laws are laws meant for regulating the conduct of the litigants in litigation. Those provisions are not to be used as if a club, for punishing such defaulters. Needless to point out that the law would not help the indolents but at the same time it is to be remembered that the law should not punish the innocents, the innocent defaulters. After a circumspective inquiry has been made and if the Court comes to a conclusion that the default is motivated by a bona fide misunderstanding and there are no legal impediments to consider the delay, it should not be weighed, over weighed by number of days of delay. The number of days of delay are not to be counted by arithmetical numbers what is to be counted is the core of the grievance which has been put forth by such a litigant. The approach of the Court should always be broad-minded and sufficiently sympathetic because Courts are meant for administration of justice and that too in real spirit. Thus, all these applications are allowed. The delay stands condoned and the abatement stands set aside. The L.Rs. of deceased appellant be brought on record by doing necessary exercise within a week. Thus, these applications are disposed off.

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