

A. Rajagopalan Vs. Murugan Textiles

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Court : Delhi

Decided On : Sep-11-1997

Reported in : 1997VIAD(Delhi)177; 73(1998)DLT508; 1998(46)DRJ387; (1998)119PLR39

Judge : K.S. Gupta, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 22, Rule 4

Appeal No. : Interim Application Nos. 7460 and 7486 of 1994 and Suit No. 3442 of 1989

Appellant : A. Rajagopalan

Respondent : Murugan Textiles

Advocate for Pet/Ap. : F. Hasan,; Ashok Kashyap and; V. Mohana, Advs

Judgement :

K.S. Gupta, J.

(1) This order will govern the disposal of I.A Nos. 7460/94 & 7486/94.

(2) Plaintiff filed I.A. 7460/94 under Order Xxii, Rule 4 and Section 151, Civil Procedure Code alleging that the suit filed by him for recovery of Rs. 19,51,343.40P. is pending against the defendants. On May 2, 1994, Counsel for

defendants informed the Court that defendant No. 4 died on February, 1, 1994. Plaintiff did not have any information about the death of defendant No. 4. Thereafter, plaintiff tried to find out the names of the legal heirs of the deceased defendant and on July 21, 1994 he came to know that he left behind V. Rajaram and Smt. C.N. Bhagirathi as L.Rs. It was prayed that both of them may be impleaded as L.Rs. of deceased defendant No. 4.

(3) I.A. 7486/94 under Section 5 of the Limitation Act was filed for condensation of delay in filing I.A. 7460/94.

(4) Plaintiff has filed his own affidavits in support of the averments made in both the applications.

(5) Needless to say that proposed L.Rs. have contested both the applications by filing replies.

(6) Contention advanced by Ms. J. Mohana appearing for the proposed L.Rs. of deceased defendant No. 4 was that under Article 120 of the Limitation Act, 90 days period is prescribed for making application for bringing on record the L.Rs. of, a deceased defendant and the time from which the period begins to run, is the date of the death of the defendant. As I.A. 7460/94 was filed beyond the expiry of the period of 90 days, the suit stood abated and without praying for the setting aside of the abatement the application as it stands is not legally maintainable. Submission has no force. It is not in dispute that the plaintiff's Counsel for the first time came to know about the death of defendant No. 4 on February 1, 1994, on May 2, 1994 from Mr. Ashok Kashyap, Advocate representing the defendants in the suit. It is further not in dispute that both the proposed L.Rs. son and the widow are the residents of Tirupur in the State of Tamil Nadu. There seems to be reason to disbelieve the averment made in paras 4 & 5 of I.A. 7486/94 which is supported by the affidavit of the plaintiff himself, that the plaintiff after May 2, 1994, has been trying to find out the names of the L.Rs. of defendant No. 4 and he could not ascertain their names before July 21, 1994. Thereafter I.A. 7460/94 was filed along with I.A. 7486/96 on July 27, 1994. That being so delay in filing I.A. 7460/94 deserves to be condoned and the same is hereby condoned.

(7) L.RS. of the deceased defendant No. 4 as claimed in I.A. 7460/94 can be brought on record only after the abatement is set aside. There fore, in the aforesaid I.A. relief for setting aside abatement was also implicitly claimed. That being so, abatement of suit qua defendant No. 4 which was automatic is set aside and son and the widow of the deceased defendant No. 4 are allowed to be brought on record in his place. Both the applications are disposed of accordingly.

(8) Amended memo of parties be filed by the plaintiff within two weeks.

(9) Written statement, if any, be filed by both the L.Rs. within four weeks from today.

(10) List on October 28, 1997.

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