

State Vs. Prem Raj

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Court : Rajasthan

Decided On : Oct-28-1991

Reported in : 1992(1)WLC516; 1991WLN(UC)259

Judge : N.K. Jain, J.

Appeal No. : S.B. Civil Second Appeal Nos. 193 and 472 of 1974

Appellant : State

Respondent : Prem Raj

Judgement :

N.K. Jain, J.

1. These second appeals are pending since 11.3.1974 against the judgment and decree dated 18.10.73 passed by learned Addl. Dist. Judge, Sirohi in C.A.D. No. 45/71 and C.A.D. No. 44/71 which arise from the judgment and decree dt. 1.6.71 of learned Civil Judge, Sirohi passed in civil suit No. 90/70. Both these appeals were decided by the first Appellate court by a common judgment dt. 18.10.73. Hence, they are being disposed of by this common judgments.

2. During the pending appeal Prem Raj respondent has expired, when the came up for consideration on 25.7.85, learned Counsel for the respondents submitted that Prem Raj died long back hence appeal has abated. On this learned Counsel

for the appellant sought time to ascertain the fact and to seek instructions to take proper steps Mr. K.C. Samariya, has been appointed as Guardian Ad-litem for minors Dharamendra Kumar Chandra Prakesh, puneet Kumar and Bhupesh Kumar, legal representatives of Nand Kishore and Gulab chand.

3. Mr. R.C. Maheswari, learned Counsel for the appellant state has prayed that the application under Order 22 Rule 4 of the C.P.C. be allowed and legal representatives of the deceased Prem Raj be taken on record viz. Smt. Mohini, Shri Babulal, Shri Biharilal, Shri Gulab Chand, Shri Shankerlal and Shir Nand Kishore and also prayed that legal representatives of deceased legal representatives viz. Gulab Chand, Babulal and Nand Kishore be also taken on record.

4. Mr. I.J. Lodha, learned Counsel on behalf of legal representatives Mohini and Behari has submitted that the application has been filed after abnormal delay and only on 30.9.85 Whereas Prem Raj expired on 2.3.1979 and the period for setting aside the abatement has been already been expired and on application for setting aside the abatement has been filed. He has also submitted that a bare perusal of the application filed by the appellant shows that the appellant has not explained sufficient cause of delay of each days. He has further submitted that our of six legal representatives of deceased repondent Prem Raj four have expired. The appellant has not moved application for bringing legal representatives of deceased legal representatives except for deceased legal representatives No. 3, 4 & 6, Which is also time barred and, therefore this appeal has abated.

5. I have heard respective arguments on the applications and have perused the record carefully.

6. In Union of India v. Ramchandran : [1964]3SCR467 it has been observed that the Court is not to involve its inferent powers under Section 151 C.P.C. for the purposes of impleading the legal representatives of a deceased respondent, if the suit had abate on account of the appellant not taking appropriate steps within time to bring the legal representatives of the deceased party on the record and when its application for setting aside theabatement is not allowed on an account of its failure to satisfy the Court that there was sufficient cause to not impleading the

legal representatives of the deceased in time and for not applying for the setting aside of the abatement within time. It has also been held that mere allegation about belated knowledge of death of opposite party is not sufficient, reasons leading to not knowing of death within reasonable time must be stated.

7. In *State of Gujarat v. Sayed Mohd. Baquir* : [1982]1SCR551 Wherein time barred application for bringing legal representatives of deceased respondent on record no cause shown for condonation of delay for setting aside abatement, the appeal was dismissed in view of abatement and it has been held that strong case on merits is not a ground for condonation of delay.

8. In *Madan Niak v. Mst. Hansulala Devi and Ors.* : AIR 1983 SC676 , it has been observed that it may be mentioned that no specific order for abatement of a proceeding under one or the other provision of Order 22 is envisaged, the abatement takes place on its own force by passage of time. In fact, a specific order is necessary under Order 22 Rule 9, CPC for setting aside the abatement.

9. In the instant case, admittedly no application for setting aside abatement has been moved. The application under 22 Rule 4 of the C.P.C. was moved on 30.9.85 In the application, it is alleged that the appellant came to know about the death of Prem Raj on 24.7.85 When the case was listed in the Court, and the learned Counsel for the appellant sought time to ascertain the fact. It is pertinent to note that the appellant inquired from the Jalore office about the death of Prem Raj whereas the contract was executed at Sumerpur, Dist. Pali. Ultimately, it was informed to the Jodhpur office of Excise Deptt. on 13.9.85. The application was ready on 21.9.1985 but the same was filed on 30.9.85 The appellant has given his explanation and cause of delay in para 7 of the application which runs as under:

7. That the appellant was not aware about the death of the respondent and soon it came to the knowledge on 25.7.85. the necessary steps without any lapse of time have been taken & this application is being filed.

10. In support of this application, Shir Shiv Dutt, Dist. Excise Officer has filed an affidavit. Admittedly nothing has been pleaded and there is no prayer to set aside the abatement. The application only contains that the legal representative of Prem

Raj may be substituted without pleading sufficient cause and without asking to set aside abatement. The delay between the period 21.8.85 to 30.9.85 has not been pleaded and explained. The Court cannot set aside the abatement of the suit, unless the very circumstances of the case, it so obvious that the court be in a position to hold that there was sufficient cause for the appellants not to continue the suit by taking necessary steps within 90 days. Hence this application cannot be treated for this purpose. Apart from this out of six legal representatives of Prem Raj, Babulal, Gulab Chand, Shankarlal and Nand Kishore have expired before substitution and only Mohini Devi and Beharilal are alive. A perusal of the order-sheet dt. 16.12.87 reveals that the state was directed to take steps to get L.Rs. of deceased legal representatives Gulab Chand and Nand Kishore of the deceased respondent served within one month failing which the appeal shall stand dismissed without reference to the Bench. Mr. Lodha submitted on that date that Babulal, legal representative of deceased respondent Prem Raj has also expired. But despite that no application was moved by the state in time. The state has moved an application to this effect on 7.11.89. A perusal of this application shows that this application was ready on 29.9.89 but the same was filed on 7.11.89 more than 40 days even after the knowledge, which has not been explained in view of this the entire record goes to show that the appellant was not vigilant to take necessary steps to bring L.Rs. on record in time as provided under Article 120 of the Limitation Act, 1963 & for setting aside abatement. Similarly State has failed to file application in time to bring L.Rs. of deceased legal representatives of Babulal, Gulab Chand and Nand Kishore and in respect of setting aside the abatement. Nothing has been explained in the application supported by the affidavit of Shri Sher Singh, D.E.O. in this regard as already observed. The state has not explained that the appellant was prevented from making the application for substitution in time and has not explained sufficient cause for continuing the appeal. Even if I take a liberal view for the period 25.3.1976 to 25.7.1985 then also the state has not explained the delay from the knowledge and the preparation of the application till filing of the same. In my opinion, as discussed above there is no good ground to condone the delay and without there being any prayer for setting aside the abatement the application cannot be allowed at this belated stage. In view of this, the argument of Mr. Maheshwari that it was the duty of the respondent

to communicate the court cannot be accepted, more so as the respondent has expired. This matter is pertaining to financial year 1963-64. In view of the case law and the cricumstances as discussed above both the applications are dismissed. In view of this, both the appeals stand abated.

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