

Ganesh Agencies and anr. Vs. O.R. Abdul Rahim and anr.

Ganesh Agencies and anr. Vs. O.R. Abdul Rahim and anr.

SooperKanoon Citation : sooperkanoon.com/827593

Court : Chennai

Decided On : Jan-31-1997

Reported in : (1997)2MLJ149

Appellant : Ganesh Agencies and anr.

Respondent : O.R. Abdul Rahim and anr.

Judgement :

ORDER

T.N. Vallinayagam, J.

1. C.M.P. No. 481 of 1997 is filed for excusing the delay of 630 days in filing the application to bring on record the legal representatives of the respondent. C.M.P. No. 482 of 1997 is filed to set aside the abatement, arising due to the death of the respondent and C.M.P. No. 483 of 1997 is filed to bring on record the proposed party as legal representative of the deceased respondent.

2. C.M.P. No. 481 of 1997 is seriously opposed and a counter has been filed by the wife of the deceased landlord.

3. It is curious and important to note that she herself has filed an application in I.A. No. 14 of 1994 in R.C.O.P. No. 27 of 1987 to implead her as the legal representative of her deceased husband and that petition was ordered on 9.12.1994 by the District Munsif, Thanjavur. When she was aware of the fact that

her husband died and when she herself has filed an application to bring her on record as the legal representative, it is not proper for her to contend before this Court that it is the duty of the petitioners alone to take steps and not herself. The law is both for the petitioners and the respondent and it is not the one way traffic for the petitioners alone to take steps. Even taking it for granted for the purpose of argument, as submitted by the petitioners, there has been delay only on the part of the petitioners herein to bring on record the wife of the deceased landlord as the legal representative, in my opinion, the right of a person cannot be defeated merely on the ground that he has not taken steps to file application, which according to me is only a mere formality. I could certainly put the blame on the present landlady, i.e., the widow of the deceased landlord and nothing prevented her to come to this Court or at least write a letter to the counsel on record before this Court. There may be laches on the part of the persons representing the parties and certainly, the procedural knowledge cannot be attributed to a litigant and lack of procedural knowledge on their part cannot be taken as a ground to dismiss the application, when one such application is filed. It may be that the lower court Advocate was very busy in not intimating the fact to the Advocate on record before this Court. Therefore, this is a matter, where though the date of death of the landlord is within the knowledge of the party, unless the Advocate on record has reported the date of death of the deceased, it cannot be said that the party is at default in not filing application to bring on record L.Rs. of the deceased.

The counsel on record before the lower court has not informed about the death of the deceased landlord to the Advocate on record before this Court. It cannot be blamed on anybody and such delay according to him is only an apparent delay and not a real delay. In my firm opinion, party's right cannot be defeated on this kind of delays or condonations. According to him, such application for condonation should be allowed and the right of parties is to be decided on merits. I am fortified with the views expressed by the Bombay High Court in the case reported in Vasantpandu v. Shankar Dhondu Ghole 1996 CCR 64, where the court has found as follows:

11-A. We have to consider one more legal aspect in this case and that is as regards the effect of the amendment by which Order 22, Rule 10-A was inserted

with effect from 1.2.1977. By the aforesaid amendment mandatory duty is cast on the pleader appearing on behalf of the deceased to bring the death of party in the suit and appeal to the notice of the court and thereupon the court shall give the notice of death to the other part, who should take steps to bring the legal representative on record. In this case admittedly after the death of plaintiff No. 2 on 31.10.1985 pleader or Advocate appearing on behalf of the plaintiffs has not followed the aforesaid mandatory requirement and, therefore, the defendants appellants in the lower appellate court were unaware about the death of the plaintiff No. 2. If the aforesaid facts of death of plaintiff No. 2 would have been reported to the court, the court would have given the notice to them who would have made application for bringing the heirs on record. Since the Advocate on behalf of the plaintiffs failed to follow the mandatory requirement under Rule 10-A of Order 22 of the Civil Procedure Code, in my opinion the plaintiffs cannot argue the point of abatement, in view of this argument advanced on behalf of the appellants plaintiffs that the appeal got abated before the lower appellate court due to the death of Kashibai is rejected.

My view is further fortified by the case reported in *State of Madhya Pradesh v. S.S. Akorlkar J.T.* (1996) 2 S.C. 286 wherein the Supreme Court has held as follows:

We find that the approach of the High Court is wholly untenable and unsustainable. Under Order 22, Rule 10-A, it is the duty of the counsel, on coming to know of the death of party, to inform it to the court and the court shall give notice to the other party of the death. By necessary implication delay for substitution of legal representatives begins to run from the date of knowledge. It is notorious that in Government proceedings, no one takes personal responsibility and each would pass over the responsibility to the other officer. It is common knowledge that almost 50% of the cases filed in Supreme Court are barred by limitation. Delay is equally usual in private cases. The court examines each case on merits. The counsel for the respondent had informed the death of the principal respondent Akolkar on March 16, 1983. It would be obvious that counsel for the State has to intimate the concerned officer who in turn is required to have the details ascertained through his subordinates by deputing the concerned officer to ascertain the further details of the legal representatives and feed the officer with all

factual details. In the process, delay would occur. Accordingly, the applications came to be prepared on April 7, 1983 and were filed next day. It would be obvious that they had acted with diligence in collecting the information and filing the petition. In the process, a short delay had occurred.

It is settled law that the consideration for condonation of delay under Section 5 of Limitation Act and setting aside of the abatement under Order 22 are entirely distinct and different. The court always liberally considers the latter, though in some cases, the court may refuse to condone the delay under Section 5 in filing the appeals. After the appeal has been filed and is pending, Government is not expected to keep watch whether the contesting respondent is alive or passed away. After the matter was brought to the notice of the counsel for the State, steps were taken even thereafter; after due verification belated application came to be filed. It is true that Section 5 of Limitation Act would be applicable and delay is required to be explained. The delay in official business requires its breach and approach from public justice perspective.

Under these circumstances, we are of the opinion that the High Court was not right in refusing to set aside the abatement and to condone the delay in filing of the petition to bring by their legal representatives on record. The delay is condoned. The abatement is set aside and the legal representatives are brought on record.

4. As already found by me, the counsel for the respondent in the C.R.P. has not officially intimated the counsel for the petitioners about the date of death, am not blaming him for not doing so, because he himself had no knowledge of the same. Therefore, my view is strengthened by these facts and I have no hesitation to allow all the three applications. However, these petitions shall be allowed on payment of cost of Rs. 750 (Rs. 250 in each petition) to the counsel for the respondent herein in this Court within a week. Call on 7.2.1997.