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Court : Kolkata

Decided On : May-23-1910

Reported in : 7Ind.Cas.391

Judge : Mookerjee and ;Carnduff, JJ.

Appellant : Tarini Kumar Dutt and ors.

Respondent : Gopeswar Pal Chowdhury

Judgement :

1. We are invited in this Rule to set aside the abatement of an appeal from original decree under Order XXII, Rule 9, Sub-rule 2 of the Code of Civil Procedure of 1908. There is no dispute as to the facts. The sole respondent in the appeal Gopeshwar Pal Chowdhury died on the 6th October 1909. No application to bring his legal representatives on the record as required by Rule 4 was made within the prescribed time, namely, six months from the date of death as provided in Article 177 of the second Schedule of the Limitation Act. The result was that on the 6th April 1910, the appeal abated under Order XXII, Rule 4, Sub-rule 3. The present application was made on the 25th April 1910. The question which requires consideration is, whether upon this application the abatement should be set aside. The abatement can be set aside only if it is proved under Rule 9 Sub-rule (2) that the appellant was prevented by any sufficient reason from continuing the appeal. It is stated in the affidavit filed on behalf of the appellant that some time in February, possibly on the 21st February 1910, one of the sons of the deceased respondent

Tarakeshur Pal Chowdhury, who is a Vakil of this Court, and had entered appearance in the appeal on behalf of his father, informed the Vakil for the appellant that his father was dead and that he and his brother had to be brought on the record. There upon the learned Vakil for the appellant sent information to Brojo Nath Roy an officer of the appellant who resided in Calcutta. It is expressly stated in the affidavit filed on behalf of the appellants that their Vakil had been requested to have all communications regarding the appeal with their officer Brojo Nath Roy. Brojo Nath, however, did not intimate this matter to his masters till the 6th April 1910. Under what circumstances Brojo Nath acted in this manner, it is not explained but what is alleged is that he was negligent. The appellants upon the receipt of the letter of Brojo Nath took steps to make the present application which, as already stated, was presented to us on the 25th April. Under these circumstances, we are invited by the learned Vakil for the appellants to hold that there was sufficient cause which prevented them from continuing the appeal. The learned Vakil has argued that Rule 9, Sub-rule (2), has the same effect as if it provided that the abatement or dismissal should be set aside when it was proved that the appellant was prevented by any cause sufficient to prevent him from continuing the appeal, and he has contended that forgetfulness or negligence on the part of a specially appointed agent was sufficient cause within the meaning of the Rule. Now it is neither necessary nor desirable that any attempt should be made to define precisely the meaning of the expression 'sufficient cause' because to do so would be, as was observed in the case of *In re Manchester Economic Building Society* 24 Ch.D. 488 at p. 503 : 53 L.J.Ch. 115 : 49 L.T. 793 : 32 W.R. 325, to crystallize into a rigid definition that judicial power and discretion which the legislature have for the best of all reasons left undetermined and unfettered. But although we need not define exhaustively what is meant by 'sufficient cause' within the meaning of Rule 9, we are clearly of opinion that negligence or forgetfulness on the part of the agent specially appointed by the appellants to look after the appeal and to receive notices and information from their Vakil, is not a 'sufficient cause' within the meaning of Rule 9. It must be remembered, as was observed by the learned Judges of the Bombay High Court in *Karson Das Dharamsey v. Bai Gungabai* 30 B. 329 : 7 Bom. L.R. 965, and in *Bhimrao Ramrao Desai v. Ayyappa Tellappa* 31 B. 33 : 8 Bom. L.R. 858, that when the time for reviving proceedings in

a Court is once passed, a very valuable right is secured to the successful litigant, and the Court must, therefore, be fully satisfied of the justice of the grounds on which it is sought to obtain an extension of the time for attacking the decree, and thus perhaps depriving the successful litigant of the advantages which he has obtained. The hardship in the present case may be great, but the appellants must take the consequence of forgetfulness or negligence on the part of their specially appointed agent. It is not suggested that any blame in this matter attaches to the legal representatives of the deceased respondent. On the other hand, it is quite clear that one of them did his best to apprise the Vakil for the appellants that an application for substitution was necessary and the latter also promptly communicated with the officer of his clients. No blame, therefore, attaches to the representatives of the deceased respondent or to the learned Vakil who had charge of the case on behalf of the appellants.

2. The result, therefore, is that this Rule is discharged. We make no order as to costs.

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