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Court : Himachal Pradesh

Decided On : Nov-03-1977

Reported in : AIR1978HP28

Judge : R.S. Pathak, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 5; ;Limitation Act

Appeal No. : Civil Revn. No. 43 of 1977

Appellant : Abhi Ram

Respondent : Moti Ram and ors.

Advocate for Def. : Yoginder Pal and; Chhabil Dass, Adv.

Advocate for Pet/Ap. : D.P. Sood, Adv.

Disposition : Revision dismissed

Judgement :

R.S. Pathak, C.J.

1. This revision petition is directed against an order dated March 19, 1977 of the learned Subordinate Judge, Kandaghat purporting to restore a suit and directing that the legal representatives of certain deceased parties in the suit be brought on the record.

2. A suit was filed in the Court of the learned Subordinate Judge, Kandaghat, and during the pendency of the suit an order was made by the learned Subordinate Judge staying the proceedings in the suit pending the disposal of a first appeal in the High Court. The order specifically directed that the suit be stayed and the record be consigned to the record-room, the suit to be revived when the appeal had been disposed of in the High Court. The order of stay was made on Dec. 5, 1966. It appears that the appeal was actually disposed of by the High Court on Oct. 7, 1968. On April 1, 1972 Jagat Ram one of the plaintiffs died and on Feb. 2, 1973 Bala Ram, another plaintiff, died. Thereafter on May 1, 1973 Gorkhia, a defendant, died. On Aug. 5, 1973 an application was made by the plaintiffs for impleading the legal representatives of the deceased parties. It was stated in the application that:

'1. The above suit which was pending in this Court has been stayed on 5-12-1966 under the orders of Hon'ble High Court issued in a civil appeal to which the plaintiffs in the present case were not the parties.

2. That the said appeal had been dismissed by the High Court but the Court has not restored the suit so far. An application for its restoration is being moved today. The plaintiffs have come , to know about the dismissal of the aforesaid appeal on 1st of Aug. 1973 only.' Thereafter the application recited the fact of the death of the parties mentioned above and set out the legal representatives. The prayer contained in the application was to the following effect : '5. It is, therefore, prayed that legal representatives of Jagat Ram and Bala Ram deceased plaintiffs as specified in para 3 above may please be impleaded as plaintiffs in their stead and legal representatives of Gorkhia pro forma defendant as specified in para 4 above may please be impleaded as pro forma defendants.'

To this applications the defendants made reply, and a number of objections were taken to the application. On the controversy so arising between the parties the trial Court framed the following issues.

'1. Whether the application filed by the petitioner is within time? OPP.

2. Whether the suit has abated for not bringing the LRs of the deceased parties in time? onus (objected) OPP

3. What is the date of death of some of the plaintiffs and defendants in this suit and what is its effect on this application? OPP

4. Relief.'

It appears that an application was also made separately by the plaintiffs for 'restoration' of the suit. Both the applications were disposed of by the learned Subordinate Judge by his order dated March 19, 1977. They were allowed and the legal representatives were brought on the record in place of the deceased parties

3. By this revision petition, learned counsel for the petitioner contends that the order dated March 19, 1977 made by the learned Subordinate Judge suffers from want of jurisdiction for the reason that the application filed by the plaintiffs for substitution of the legal representatives did not pray for setting aside the abatement of the suit. It is also urged that the plaintiffs knew of the death of the parties much before the substitution application was made and that in fact the application was barred by limitation.

4. It may at once be stated that the learned Subordinate Judge as well as the parties before him appear to have proceeded under a complete misconception of the effect of the order staying the proceedings in the suit. When the learned Subordinate Judge made an order staying the proceedings in the suit, there was no question of any revival of the suit. The suit continued pending in the trial Court. It had not been disposed of finally. It had not been dismissed. No decree had passed in the suit. There was no question of reviving the suit. If it was consigned to the record-room that was merely by way of convenience. All along the suit must be taken to have continued pending in the trial Court, and what had been done was to stay the proceedings in the suit so long as the appeal in the High Court was not disposed of. On the disposal of that appeal, the trial Court should have formally revoked the order staying the suit. In fact, in law even that was not necessary. The stay order automatically came to an end as soon as the appeal was disposed of by the High Court. All that was needed was information that the

appeal had been disposed of in order that the learned Subordinate Judge should take up the suit again. That information should have been conveyed by the High Court to the trial Court in the event that the High Court had been informed by the trial Court that the suit had been stayed because of the pendency of the appeal in the High Court. In case that was not done, one of the parties should have informed the trial Court that the appeal had been disposed of and that the suit should be taken up again. Properly, it was the duty of the plaintiffs to have informed the trial Court of the disposal of the appeal. The arguments on the application filed before the trial Court for 'restoration' of the suit proceeded on the assumption that some period of limitation was prescribed for conveying that information to the trial Court. There is no question whatever of any period of limitation in the matter. Inasmuch as the suit had remained pending in the trial Court, no provision of the Limitation Act can be said to have been attracted. Any application moved for continuing the proceedings in the suit could only be an application by way of information. It was not an application asserting any right in the applicant. The right which the plaintiffs enjoyed was a right asserted by them when the plaint was instituted and that right continued in existence all along. However, under the impression that the suit needed to be revived before any proceeding could be taken therein, according to the case of the plaintiffs no substitution application could be made by them until they came to know on Aug. 1, 1973 of the disposal of the appeal in the High Court. The case set up by the plaintiffs that they had come to know of the disposal of the appeal only on Aug. 1, 1973 has been believed by the learned Subordinate Judge. In accepting that case of the plaintiffs, I am unable to hold that the learned Subordinate Judge has committed any error of jurisdiction. As regards the point that the application moved by the plaintiffs for substitution of the legal representatives did not also pray for setting aside the abatement of the suit, it seems to me that in substance the application called for a decision on that question, and that question was present to the mind of the defendants when they filed their reply to the application. Indeed, an issue was specifically framed on the point whether the suit had abated because the legal representatives of the deceased parties had not been brought on the record in time. The learned Subordinate Judge applied his mind to this part of the case and came to the conclusion that the plaintiffs had explained the delay satisfactorily. There was

evidence before the learned Subordinate Judge on which he could come to that conclusion.

In the circumstances, I am unable to find any jurisdictional error in the order impugned in this revision petition.

5. The revision petition is dismissed, but there is no order as to costs.

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