

CS No.612897/16

Atul Kumar & ors v/s Bimla Devi

22.10.2018

Present: None.

Two applications are pending for disposal. One is under Order 22 Rule 4, CPC seeking impleadment of the Legal heirs of defendant no.1 Smt. Bimla Devi and another is under Order 32 Rule 12 (5), CPC.

Firstly, the application under Order 22 Rule 4, CPC is taken up for consideration. It is stated that defendant no.1 has expired. The present application has been moved to bring on record the fact that Class 1 Legal heirs of Smt. Bimla Devi are already arrayed as defendant in the present case. In reply to the said application, objection was taken that children of pre deceased son of Smt. Bimla Devi has not been arrayed as legal heirs in the present application.

It is a settled law that all the Class 1 legal heirs are not required to be substituted in case of death of party. Reference in this regard be made to the judgment passed by the Hon'ble Supreme Court in the case of **Dolai Malik (deceased) represented by his his legal representative & ors v/s Krushna Chandra Patnaik & ors, 1967 SC.**

Hence, present application will not be liable to be dismissed only because children of predeceased Bimla Devi are not substituted as legal heirs. Besides this, the application has been moved within limitation period and right to sue also survives against legal heirs of Smt. Bimla Devi. During the pendency of the present application, applicant has filed a fresh amended memo of parties thereby impleading children of pre deceased son of Bimla Devi also. Hence, the application is allowed. The said amended memo of parties is taken on record.

Another application is moved under Order 32 Rule 12 (5), CPC on behalf of plaintiff no.3 and 5. It is stated that at the time of institution of the suit, both said plaintiffs were minor and

they were represented by their father. It is stated that both plaintiffs have attained maturity and therefore, they want to pursue the suit and has requested that next friend may be discharged. Objection which has been raised to the present application are that same has not been moved immediately after plaintiffs have attained maturity. It is stated that therefore, present application is liable to be dismissed. As per provisions of Order 32 Rule 12 (5), CPC after attaining maturity, a minor for whom a guardian or next friend is appointed can exercise his option of pursuing with the matter at any time.

There is no limitation period prescribed for pursuing present application. Further, even if it is taken that said application is barred by limitation then the affect will be only that plaintiff no.3 and 5 will continue to be represented by their father who is appointed as guardian and next friend.

Further it has been stated on behalf of applicant that due to transfer of the matter from the Hon'ble High Court, application could not be moved within time. Application is duly supported with the affidavit. The reasons submitted is supported with judicial record. Hence, even if it is taken that there is delay in filing the application, applicants have furnished sufficient reasons for condoning the delay. Therefore, present application cannot be dismissed merely as being barred by limitation.

I do not find any illegality in the same. Hence, present application is allowed. Sh. Raj Kumar is discharged as guardian/next friend of plaintiff no. 3 and 5. Plaintiff no.3 and 5 are permitted to proceed with the case in their own name.

Be listed for PE on 16.03.2019.

Sugandha Aggarwal  
ADJ/West/Delhi  
22.10.2018