

MHJN020023212012



Spl.C.S.NO.86/2012

Ramniwas Vs Pushpadevi

ORDER BELOW EXH-114 IN SPL.C.S. NO.86 OF 2012

(Passed on dated 18/01/2020)

The plaintiff filed this application for condonation of delay to bring legal heirs of deceased defendant No.6 on record. He has submitted that deceased Bhavaribai Ramkisanji Indani is died on 28.06.2018. Some of the legal heirs of deceased defendant No.6 are already on record and they are defendant Nos. 1 to 3. However, her daughters are not on record and delay is caused due to oversight to bring the legal heirs of deceased on record. It is further stated that delay of 6 Months 24 Days is needs to be condoned.

2. On this application no say is filed. Hence, the application is proceeded without say.

3. Read application, perused record and heard learned advocate for the plaintiff.

4. On perusal of record, it appears that deceased Bhavaribai is died on 28.06.2018 and the present application is preferred for condonation of delay to file application for bringing legal heirs of deceased on record. While dealing with this application, provisions laid down in order 22 rule 4 of the Civil Procedure Code plays important role. At this stage, it appears necessary to reproduce rule 4 of order 22, which reads

thus;

Order 22 rule 4- Procedure in case of death of one of several defendants or of sole defendant: (1) Where one of two or more defendants dies and right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant, who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where:

(a) the plaintiff was ignorant of the death of a

defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963) for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said Section 5, have due regard to the fact of such ignorance, if proved.

5. Hence, from the above provisions in rule 4 of order 22 it can be seen that it is necessary to file application to bring legal heirs of deceased on record within the time limited by law otherwise, the suit gets abated so far as the deceased defendant is concerned. In this regard, Article 120 of Limitation Act, 1963 provides period of limitation of 90 days to file the application to bring legal heirs of deceased on record. However, after expiry of first 90 days the suit gets abated and period of limitation of 60 days is provided to set aside the order of abatement in view of Article 120 of Limitation Act, 1963.

6. Thus, from the above-said provisions of CPC and Limitation Act, it further appears that after the death of

deceased Bhavaribai on 28.06.2018 it was necessary for the plaintiff to file application to bring legal heirs of deceased on record within 90 days. Thereafter, when the period of 90 days expired the suit against defendant No.6 was abated. After the expiry of first 90 days from the death of deceased, the plaintiff did not file any application to set aside the abatement order within 60 days. Therefore, the plaintiff was having opportunity to prefer the application under section 5 of limitation act to condone the delay to file application for setting aside the abatement order. However, no such application for setting aside the abatement order nor application for condonation of delay to file the application for setting aside abatement order is filed by the plaintiff.

7. The present application filed by the plaintiff is to condone the delay to file application to bring legal heirs of deceased on record and not for the application to set aside the abatement order. In pursuant to the provision laid down in order 22 rule 4 of CPC, the present application is not tenable as the suit is abated against deceased defendant No.6. Needless to state that the plaintiff was required to file the application for setting aside abatement order alongwith the application for condonation of delay to file the said application i.e. for setting aside abatement order. Thus, in the absence of necessary and legal application the present application is not tenable at all in the eyes of law. Hence, the application is liable to be rejected. Moreover, the plaintiff is at liberty to file fresh application properly. Thus, in the result, I pass following order:

ORDER

The application at Exh-114 is rejected.

CERTIFICATE

I affirm that, this PDF file is word to word as per original Order/Judgment.

Name of Stenographer :S.M. Sapkal,
Name of Court :4th Jt.Civil Court,(S.D.) Jalna,
Date of PDF :18/01/2020.

Sd/-
(S.M.Sapkal)
Stenographer (L.G.)