

23.10.2017

Present: Mr. Nimish Gupta, Advocate, for the appellant.

Mr. Vivek Singh Thakur, Advocate, for proposed legal representative Shri Bheemo.

CMP No. 2132 of 2016

The present application is maintained by the applicant-appellant, under Section 5 of the Limitation Act, for condoning the delay in filing an application, under order 22, Rule 4, read with Section 151 of the Code of Civil Procedure for bringing on record the legal representatives of deceased respondent, late Shri Ratno. As per the applicant, he came to know about the death of the respondent in the month of November, 2016, when learned counsel for the respondent apprised him about his death. Thereafter, learned counsel for the applicant-appellant wrote a letter to the applicant to bring the death certificate, as well as legal representatives of the deceased respondent and subsequently the present application was filed without any further delay. However, in this process delay of two years, six months and sixteen days has occurred, which is neither intentional nor willful, but was beyond the control of the applicant, hence the same may be condoned. The application is duly supported with an affidavit. Reply to the application filed and it is averred that deceased Ratno has expired on 25.02.2014 and the

applicant has intentionally not moved the application within limitation, hence the present application be dismissed.

Heard. Learned counsel for the applicant has argued that the applicant could not move application within time, as he only came to know about the death of deceased respondent in the month of November, when learned counsel for the non-applicant-respondent brought to his notice that respondent has expired. On the other hand, learned counsel for the non-applicant has argued that the parties to the litigation are neighbors and applicant was well aware about the death of the respondent. He has further argued that the applicant had not moved the application within time, as he was raising construction by disobeying the order, passed by this Court on 05.11.2009.

After hearing learned counsel for the parties and gone through the record, this Court finds that in paras 2 & 3 of the application, the applicant has explained sufficient cause, which prevented him from filing the application under Order 22, Rule 4, read with Section 151 CPC, within the prescribed period of limitation. Keeping this in view, the delay deserves to be condoned. At the same point of time, this Court after going through the averments, made by learned counsel for the non-applicant finds that the non-

applicant has suffered because of the delay and the interest of justice would be met, in case the delay is condoned, subject to the costs. Accordingly, the present application is allowed and the delay of two years, six months and sixteen days, as occurred in filing the application is condoned, subject to the costs of ₹ 1,000/- (Rupees one thousand), which shall be paid by the applicant-appellant to the legal representatives of deceased respondent. The application stands disposed of.

CMP(M) No. 2131 of 2016

The present application is maintained by the applicant-appellant, under Order 22, Rule 4, read with Section 151 CPC, for bringing on record the legal representatives of deceased respondent, late Shri Ratno. As per the applicant, respondent has expired on 25.02.2014 and left behind the legal representatives, as mentioned in para 3 of the application. The application is duly supported with an affidavit, as well as death certificate of the deceased. Reply to the application has been filed and with reply, legal heirs certificate Annexure LR-1, issued by the Office of the Tehsildar, Chamba, H.P., has been appended, wherein names of Smt. Vayasa and Smt. Tripta, daughters of the deceased has been mentioned.

Heard. Learned counsel for the applicant has argued that as the suit land is ancestral property, so the

daughters of Shri Bheemo may also be substituted as legal representatives of deceased respondent. On the other hand, learned counsel for the non-applicant has argued that only the legal representatives, as mentioned in legal heirs certificate, Annexure LR-1, are required to be brought on record.

Taking into consideration the fact that the daughters of Shri Bheemo, as mentioned in para 3 of the application are necessary parties and they have interest in the ancestral property of the deceased, so they are required to be brought on record. At the same point of time, daughters of deceased respondent, i.e. Smt. Vayasa and Smt. Tripta are also necessary parties, as they are mentioned in legal heirs certificate, Annexure LR-1.

This Court after hearing the learned counsel for the parties and gone through the record finds that the applicant for the reasons best known to him has not tried to bring on record the daughters of the deceased as his legal representatives, which seems to be not innocent act. However, at this stage, since the respondent has brought this fact on record, legal representatives, as mentioned in para 3 of the application and also Smt. Vayasa and Smt. Tripta, daughters of deceased respondent are ordered to be brought on record, as right to sue still persists against the legal representatives of the deceased respondent. The application stands disposed of.

RSA No. 395 of 2008

Amended memo of parties be filed within a week and thereafter notice be issued to the newly substituted legal representatives returnable within three weeks, on taking steps within a week. List thereafter. Reply to CMP No. 8334 of 2017 may also be filed in the meantime.

(Chander Bhusan Barowalia)
Judge

23rd October, 2017
(raman)