

RFA No. 138 to 144 of 2009.

02.11.2018

Present: Mr. Ajay Kumar, Senior Advocate with Mr. Dheeraj K. Vashisht, Advocate for the appellants in all the appeals.

Mr. Basant Pal Thakur, Advocate vice counsel for the private respondents.

Mr. Yudhvir Singh Thakur & Mr. Kunal Thakur, Dy. A.Gs., for respondent-State.

CMP(M) Nos. 1240 & 1238 of 2018 in RFA No. 143 of 2009.

These applications have been filed for substitution of the legal representatives of respondents No.1(a) Ram Singh and 1(b) Surinder Singh. As a matter of fact, their predecessor-in-interest, respondent No.1 Maina had expired and the application CMP(M) No.399 of 2018 was filed for substitution of her legal representatives. On having issued notice in the said application, all the legal representatives except for Ram Singh and Surinder Singh were served and represented also. The legal representatives including Ram Singh and Surinder Singh were therefore ordered to be substituted as legal representatives of deceased respondent No.1 Maina vide order dated 28.6.2018, passed in CMP(M) No.399 of 2018. When notices of the appeal issued to legal representatives Ram Singh and Surinder Singh, who came to be impleaded on their substitution as respondents 1(a) and 1(b), it transpired that they both had also expired well before the application, CMP(M) No.399 of 2018 filed for

substitution of legal representatives of their mother respondent No.1 Maina.

2. This has led in filing these applications. The proposed legal representatives of deceased respondent 1(a) Ram Singh find mentioned in para 4 of the application CMP(M) No.1240 of 2018 and that of Surinder Singh respondent No.1(b) in para 4 of the application CMP(M) No. 1238 of 2018. The proposed legal representatives 1(a)(i) is reported to be served through adult son whereas proposed legal representatives 1(a)(ii) to 1(a)(v) through adult brother, and 1(a)(vi) in person. They, however, opted for not putting appearance, hence proceeded against exparte. The application, CMP(M) No. 1240 of 2018 is supported by legal heirs certificate Annexure A-1 and the death certificate Annexure A-2.

3. Similarly, proposed legal representative 1(b)(i) is reported to be served through nephew and 1(b)(ii) to 1(b)(iv) through adult brother. They have also not opted for putting appearance, hence proceeded against exparte. The application CMP(M) No. 1238 of 2018 is supported by legal heirs certificate Annexure A-1 and death certificate Annexure A-2. Consequential steps though have been taken beyond the period of limitation, however, the delay as occurred stands satisfactorily explained. Being so, both the

applications are allowed. Consequently, the legal representatives of deceased respondent No.1(a) Ram Singh are ordered to be impleaded as respondents 1(a)(i) to 1(a)(vi), whereas that of respondent 1(b) Surinder Singh as respondents 1(b)(i) to 1(b)(iv). Necessary corrections be made in the cause title of the appeal accordingly. Amended memo be filed within two weeks. Both the applications stand disposed of.

4. Issue notice of the appeal to respondents 1(a)(i) to 1(a)(vi) and 1(b)(i) to 1(b)(iv) for **2nd January, 2019** on filing of PF within a week.

5. Before parting, it is relevant to point out that vide order dated 17.5.2018, passed in RSA No.122 of 2018, all the Process Serving Agencies in the State is directed to ensure that report on a summons/notice either executed or unexecuted is complete in all respect at the time when the same is sent back to the Court concerned from where received for execution. This order has been circulated amongst all the District Judges in the State by the Registry for compliance. Irrespective of it the notices issued to proposed legal representatives 1(a)(i) to 1(a)(v), 1(b)(i) to 1(b)(iv) were received by their sons/brothers/nephews, as noticed supra, however, no report has been made that such adult members of their family were residing with them in the same house and under the same roof.

Being so, for the date already fixed, call for the comments of learned District Judge, Solan as to why the order ibid circulated by the Registry amongst all the District Judges, has not been complied with while executing the service of notices issued in the case in hand.

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Respondent No.15 Biru is also stated to be expired. The application for his substitution is stated to be filed in the Registry. If in order, be placed on record.

RFA No.140 of 2009.

Consequential steps on the death of respondent No.2 be now taken within four weeks, as prayed.

November 02, 2018 (ps) (Dharam Chand Chaudhary),
Judge