

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Second Appeal No. 102/2012

Sohani Devi And Others

----Appellants

Versus

Kajod Mal

----Respondent

For Appellant(s) : Mr. M C Jain
For Respondent(s) : Mr. Ajay Gupta

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

06/05/2022

1. This second appeal arises against the decree for specific performance passed in favour of respondent-plaintiff.
2. During course of this second appeal, out of three appellants, appellant No.1 has passed away on 26.02.2020 and appellant No.2 has passed away on 19.03.2018, leaving behind their legal representatives named in the application.
3. An application (I.A.No.3/2020) under Order 22 Rule 3 has been filed to take the factum of death of appellant Nos.1 and 2 on record and to allow the substitution of their legal representatives in their place so as to pursue the second appeal on merits.
4. Since there is some delay in filing the application, a separate application (I.A. No.1/2020) under Section 5 of Limitation Act for condonation of delay and an application (I.A.No.2/2020) under Order 22 Rule 9 CPC to set aside the abatement of appeal, if any, have also been filed.
5. It has been alleged that appellant Nos.1 and 3 are widow women and are illiterate ladies and they are not aware about the

procedure to inform the counsel about the death of appellant No.2 on 19.03.2018. Later on, appellant No.1 passed away on 26.02.2020. Thereafter, due to pandemic Covid-19, an application for substitution of legal representatives could not file, thus, in the aforesaid circumstances, the delay in filing application under Order 22 Rule 3 is not deliberate and mala fide but just circumstantial.

6. Having considered the nature of dispute involved in the second appeal and reasons assigned for delay, this Court deems it just and proper to condone the delay and to set aside the abatement of appeal qua appellant Nos.1 and 2, operates by operation of law and allow the substitution of legal representatives in place of deceased appellant Nos.1 and 2.

7. Accordingly, applications (I.A. Nos.1/2020, 2/2020 and 3/2020) stand disposed of.

8. An application (I.A.No. 1/2021) under Order 22 Rule 10(A) has been filed by one Harphool Singh, alleging *inter alia* that he is the son of sole respondent-Kajod Mal. It has been mentioned in the application that the sole respondent-Kajod Mal has passed away on 15.01.2012. It has been alleged that this second appeal has been filed assailing the judgment and decree dated 09.11.2011 passed by the first appellate court and thereafter, the sole respondent has passed away, hence this second appeal has been filed against the dead person and the same be dismissed as abated.

9. Thereafter, appellants have filed application (I.A. No.2/2021) under Order 22 Rule 4 CPC and application (I.A. No.4/2021) under Section 5 of Limitation Act and later on an application (I.A. No.3/2021) under Order 22 Rule 9 CPC, alleging *inter alia* that right to sue survives against legal representatives of the deceased

respondent, hence they may be impleaded as respondents and appeal may be allowed to continue.

10. Appellants have mentioned in their applications that the factum of death of respondent has come to their knowledge only after filing an application under Order 22 Rule 10(A) dated 16.01.2021, prior to that neither it was in the knowledge of appellants nor it came on record that respondent has passed away. However, soon after giving information of death of respondent, applications have been filed on 29.01.2021. It has been prayed that in such circumstances, the delay in filing applications may be condoned and the appeal may allow to be continued against legal representatives of deceased respondent by taking them on record.

11. Since, the son of the deceased respondent namely Sh.Harphool Singh has already appeared through advocate and filed application under Order 22 Rule 10(A) on 16.01.2021, copies of all three applications were served upon him. He has filed reply to the effect that the respondent had passed away on 15.01.2012 whereas this second appeal has been filed on 13.02.2012, hence this appeal was filed against the dead person and as such the same is not maintainable, accordingly, the appeal be dismissed. Reliance has been placed upon the judgment of the Hon'ble Apex Court in case of **Gurucharan Singh Vs. Surjit Singh and anr.** **Reported in [2012 (13) SCC 530]**.

12. Heard counsel for both parties and perused the record.

On perusal of the record of present appeal, it transpires that this appeal was presented on 13.02.2012. Then vide order dated 17.02.2012, notices were issued to respondent and in the meanwhile execution of the impugned decree for specific

performance was stayed. Notices have returned with report dated 16.01.2013 that on the house of respondent-Kajodmal his son Harphool Singh was found and accepted the notices and he resides in joint family. There is no report on notices that the respondent has passed away. It also appears from record that the respondent's son Harphool Singh filed his *Vakalatnama* on 12.02.2013 but he never informed on record about the death of respondent-Kajodmal who happens to be his father. First time, he has filed an application under Order 22 Rule 10(A) on 16.01.2021 giving information on record that respondent has passed away way back on 15.01.2012. Thereafter, immediately appellants have taken steps to bring legal representatives of deceased respondent on record by filing application on 29.01.2021 and for seeking condonation of delay.

13. In that aforementioned factual matrix, there is nothing on record to assume that appellants were having knowledge about the death of respondent on 15.01.2012 rather it appears that appellants came to know about the death of respondent only on 16.01.2021, after filing application under Order 22 Rule 10(A) by and on behalf of respondent. Thus, the delay, in filing application for taking legal representatives of deceased respondent on record, may not be said to be deliberate or intentional nor can be assumed to be suffered from mala fides rather the same seems to be bona fide and circumstantial for reasons mentioned hereinabove.

14. The Hon'ble Supreme Court in case of **Ram Nath Sao Vs. Gobardhan Sao [(2002) 3 SCC 195]** has observed that expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963 or Order 22 Rule 9 CPC or any other

similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party.

In another case of **Balwant Singh Vs. Jagdish Singh [(2010) 8 SCC 685]** it has been observed by the Hon'ble Supreme Court that a liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of applicant, to whom want of bona fide is imputable. The expression "sufficient cause" implies the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended. Even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned.

15. Having considered the facts of the present case at hand and following the proposition of law as propounded by the Hon'ble Supreme Court to take a liberal interpretation of the "sufficient cause" and the endeavour of the Court should be to have an approach to advance substantial justice with parties, this Court *prima facie* finds that the delay in filing application deserves to be condoned and consequentially legal representatives of the deceased respondent may be allowed to take on record so as to hear this appeal on merits.

16. As far as, the judgment of the Hon'ble Supreme Court in case of **Gurucharan Singh** (*Supra*) on which the respondent has placed reliance is concerned, there is no disagreement to the proposition of law propounded therein. In that case, the S.L.P. was filed against the dead person. On noticing this fact, appellants

have filed application for seeking substitution of legal representatives of deceased respondent, the Hon'ble Supreme Court observed that instead of allowing substitution, an application should have been filed seeking amendment in the memo of appeal, by impleading legal representatives of deceased respondent as party. However, the Hon'ble Supreme Court treated the application for substitution as application for amendment and taking a liberal view, the delay in filing the application was allowed to be condoned and the appeal was allowed to be amended so as to hear on merits.

17. Having considered the nature of impugned decree and facts and circumstances, this Court is satisfied that there is sufficient cause for appellants to file application after a considerable delay and the same deserves to be condoned. In order to consider and decide the present appeal on merits, it is necessary to take legal representatives of deceased respondent on record. Hence applying the *ratio decidendi* as propounded by the Hon'ble Supreme Court in case of **Gurucharan Singh** (*Supra*), the application filed by appellants under Order 22 Rule 4 is treated as application for seeking amendment in the appeal and accordingly, the same is allowed. Legal representatives of deceased respondent are taken on record and appeal is allowed to continue against legal representatives of the deceased respondent.

18. Amended cause title of the memo of appeal is directed to be taken on record and Registry may place the same at an appropriate place.

19. Accordingly, applications (I.A.Nos. 1/2021, 2/2021, 3/2021 and 4/2021) stand disposed of.

20. Respondent No.1/1-Sh. Harphool Singh has already appeared, hence notices be issued to remaining respondent Nos. 1/2 to 1/6 by both modes, ordinary as well as registered post.

21. Learned counsel appearing for respondent No.1/1 may seek instructions to appear on behalf of remaining respondents as well.

22. In the meanwhile, interim stay order dated 17.02.2012 shall remain continue.

(SUDESH BANSAL),J

SACHIN/21



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