

(2006) 07 DEL CK 0037

In the Delhi High Court

Case No : OA No. 19 of 2005 in CS (OS) No. 1099 of 1998

Amarjeet Singh

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 07-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 6 Rule 17

Citation : (2006) 91 DRJ 606

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Kuljeet Rawal, for the Appellant; Rajinder Wali, for the Respondent

Judgement

Vikramajit Sen, J.—The appellant has assailed the Order dated 22.4.2003 passed by the Joint Registrar which records that the Appellant had not filed any Reply to the Interim Application seeking to implead the legal representative of Defendant No. 3 who had already expired prior to the filing of the Suit. The impugned Order is a cryptic one and keeping in view the circumstances of the case it is quite probable as has been strenuously contended before me that the counsel for the proposed Legal Representatives had orally raised various objections against the very maintainability of the application.

2. Learned Counsel for the Appellant places reliance on the decision in Seth Hiralal Patni Vs. Sri Kali Nath, , which categorically and unambiguously states that if a Suit is filed against a Defendant who was already dead on the date of the institution of the suit, it would be a nullity. This decision had been followed a Single Bench of this Court in Pratap Chand Mehta Vs. Krishna Devi Mehta, . Prior thereto in Prestige Finance P. Ltd. (O.L.) v. Balwant Singh 1978 Rajdhani Law Reporter 246, another Single Bench had also come to the same conclusion in the context of Order XXII of the CPC without reference, however, to Hira Lai. It had been observed by D.K. Kapur, J. that while the provisions of Order I Rule 10 as also Order VI Rule 17 of the CPC may get attracted Order XXII could not come to the rescue of the plaintiff. In Cuttack Municipality Vs. Shyamsundar Behera, ,

after noting the binding precedent of Hira Lal, the Court observed that "a suit filed against a dead person is a nullity and that no substitution can be made in place of the original defendant who was dead on the date of the institution of the suit."

3. Learned Counsel for the Respondent has relied on Rasetty Rajyalakshamma and Others Vs. Rajamuru Kannaiah, , which follows the Division Bench judgment in Khaja Begum Vs. Gulam Mohiuddin and Others, . These judgments are per incuriam as Hira Lai was not cited or considered.

4. Learned Counsel for the plaintiff then draw - attention to the decision of the Hon"ble Supreme Court in Karuppaswamy v. C. Ramamurthy (1993) 4 Supreme Court Cases 41. Significantly ilira Lai was not cited before the Apex Court. Even so, a careful reading of Karuppaswamy makes it abundantly clear that it deals with the "inclusion" of a new plaintiff or Defendant in contradistinction to the impleadment of the Legal Representatives of an already arrayed party. The lis had reached the Apex Court because a plea for treating the application under Order XXII as one under Order I Rule 10 CPC had been declined by the Trial Court. The conclusion is that if a Defendant has already expired prior to the date of the filing of the Suit his Legal Representatives may subsequently be impleaded not in that capacity but as necessary parties either under Order I Rule 10 or possibly under Order VI Rule 17 CPC as opined by Justice D.K. Kapur in Prestige Finance. The impugned Order must be set aside.

5. There is yet another problem in the path of the plaintiff. If the application under Order XXII was not allowable because of the "abatement of the cause", then the impugned Order would be liable to be set aside on that short ground. The Joint Registrar is not empowered to condone delay or set aside an abatement. Such an Order can be passed only by the Court as is evident also from a reading of the High Court Rules & Orders. The Appeal is accordingly allowed. The impugned Order is set aside on this ground also.

6. These observations do not cast any reflection on pleas predicated under Order I Rule 10 or Order VI Rule 17 CPC, which questions would have been decided by the Trial Court. Trial Court records be sent back forthwith.

7. Parties to bear their respective costs.