
(2016) 01 SC CK 0017

In the Supreme Court Of India

Case No : Special Leave Petition (Civil) No. 4067 of 2008

Chandra Bai (Dead) Thr. Lrs.

APPELLANT

Vs

Khandalwal Vipra Vidyalaya Samiti and others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10

Citation : (2016) 3 Scale 297 : (2016) 12 SCC 534

Hon'ble Judges : Pinaki Chandra Ghose; Amitava Roy, JJ.

Bench : Division Bench

Advocate : Sanjeev Sen, Sr. Advocate, Rishi Matoliya, Advocate P.D. Sharma, AOR and Sarad Kumar Singhania, AOR, for the Respondent

Final Decision : Dismissed

Judgement

1. The only question raised before this Court is whether the High Court has correctly upheld the order of the learned Single Judge allowing the

application filed under Order 22, Rule 10 of the Code of Civil Procedure by Respondent No.1 Society.

2. Mr. Puneet Jain, learned counsel appearing on behalf of the petitioners submitted that the High Court ought to have dismissed the application

since the application had been filed before the Court after long delay. In support of his submissions he relied upon the following decisions of this

Court: Raj Kumar v. Sardari Lal and Ors., [2004 (2) SCC 601]; Amit Kumar Shaw and Anr. v. Farida Khatoon and Anr., [2005 (11) SCC

403]; Vidur Impex and Traders Pvt. Ltd. and Ors. v. Tosh Apartments Pvt. Ltd. and Ors. [2012 (8) SCC 384]; Bibi Zubaida Khatoon v. Nabi

Hassan Sahib and Anr. [2004(1) SCC 191] and Thomson Press (India) Ltd. v. Nanak Builders and Investors Pvt. Ltd. and Ors., [2013(5) SCC

397].

3. We have duly taken note of these decisions and it appears to us that in *Raj Kumar v. Sardari Lal* (supra), this Court has held that in case of an

assignment, creation or devolution of any interest during the pendency of any suit, Order 22, Rule 10 CPC confers a discretion on the Court

hearing the suit to grant leave to the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis

pendens transferee on record is not as of right but is the discretion of the Court. We have also noticed that in *Amit Kumar Shaw and Anr. v.*

Farida Khatoon and Anr. (supra), this Court has held that it is not necessary to make a detailed enquiry at the stage of granting leave under Order

22, Rule 10 of CPC. The Court at that point of time has to be prima facie satisfied for exercising its discretion in granting leave for continuing the

suit by or against the person on whom the interest has devolved by assignment or devolution. The question about the existence and validity of the

assignment or devolution can be considered at the final hearing of the proceedings. In *Vidur Impex and Traders Pvt. Ltd.* (supra), *Bibi Zubaida*

Khatoon (supra) and *Thomson Press (India) Ltd.* (supra), this Court though dealt with impleadment under Order 22, Rule 10 of CPC and Section

52 of the Transfer of Property Act the said decisions do not apply to the facts of this case. Therefore, the judgments cited by Mr. Jain, in our

opinion, cannot help him in the attendant facts and circumstances.

4. Mr. Sanjeev Sen, learned senior counsel appearing for respondent No.1 Society submitted that in a case under Order 22, Rule 10 of CPC,

where rights are derived by an assignee or a successor-in-interest pending litigation, it is for that assignee or transferee to come on record if he so

chooses and to defend the suit. In support of his submission he relied on the decisions of this Court in *Govt. of Orissa v. Ashok Transport Agency*

and Ors., [2005 (1) SCC 536] and *Dhurandhar Prasad Singh v. Jai Prakash University and Ors.*, [2001 (6) SCC 534], and pointed out that

under Order 22, Rule 10, the right of the assignee and/or the successor in interest will continue when there has been a devolution of interest during

the pendency of a suit. The suit can, by leave of the Court, be continued by or against the persons upon whom such interest has devolved and this

entitles the person who has acquired interest in the subject matter of a litigation

by assignment or creation or devolution of interest pendente lite or any other person in interest, to apply to the Court for leave to continue the suit.

5. Mr. Sanjeev Sen further contended that no period of limitation is prescribed under Order 22, Rule 10 of CPC. In fact the right to apply under this Rule is a continuous right and application can therefore be made at any time till the proceedings are pending. He further contended that the question of delay/laches or setting aside abatement of suit arises only where the case falls under Order 22, Rule 3 or Rule 4 and not where the case is covered by Rule 10. According to him, it is the discretion of the Court and if the Court is prima facie satisfied with the facts so pleaded before the Court, it can allow such application.

6. We have further noticed that in *Baijnath Ram and Ors. v. Tunkowati Kuer and Ors.* (AIR 1962 PATNA 285), Full Bench of the Patna High

Court has held:

Another thing to notice in connection with this rule is that a party on whom the interest of the deceased plaintiff or defendant devolves is not

entitled to continue the suit or appeal as a matter of right. It is essential to obtain the leave of the Court. The granting of leave is within the

discretion of the Court. The Court, however, is to exercise its discretion judicially and according to well-established principles. Further,

unlike Rules 3 and 4, no limitation is prescribed for presentation of an application under this rule and no penalty is laid down for failure to

substitute the person on whom the interest of the deceased plaintiff or defendant was devolved. Therefore, the right to make an application

under this rule is a right which accrues from day to day and can be made at any time during the pendency of a suit. There is no abatement

under this rule.

7. Accordingly, we find that the High Court, after considering the facts and circumstances of this case, has correctly come to the conclusion in the

matter and we do not have any room to interfere with the order so passed by the High Court. Accordingly, the special leave petition is dismissed.