
(1972) 05 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Application No's. 4130 of 1970 and 14638 of 1971
in Civil Revision No. 1777 of 1968

Chandradeo Pandey and Others

APPELLANT

Vs

Sukhdeo Rai and Others

RESPONDENT

Date of Decision : 19-05-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, 151
Limitation Act, 1963 — Article 137

Citation : AIR 1972 All 504 : (1972) 42 AWR 533 : (1972) RD 238

Hon'ble Judges : Satish Chandra, J;R.B. Misra, J;J.S. Trivedi, J

Bench : Full Bench

Advocate : S.K. Varma, for the Appellant; R. Pandey, for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—These two Civil Miscellaneous Applications arise out of Civil Revision No. 1777 of 1968. They came up for disposal before a learned Single Judge of this Court. He has referred these applications to a larger Bench because he felt that there was a conflict of opinion between two Division Bench decisions on the question whether an application in revision would abate if no substitution application was made within ninety days of the date of death of a deceased party. In the Union of India v. Shanti Swaroop AIR 1966 All 530 a Division Bench took the view that since there is no period of limitation prescribed for an application for substitution in revision, it can be made at any time so long as the application in revision is pending. A contrary view was taken by another Division Bench of Oudh Chief Court in AIR 1948 84 (Oudh) It was held that if after the admission of a revision application one of the parties dies and an application to bring his legal representatives on record is not presented within a reasonable time (which in the case of such an application is the time mentioned in Order XXII, Civil Procedure Code), the revision application will abate in the sense that the proceeding shall cease unless good cause is shown for the delay. This is how these two applications have come up before this Bench.

2. The material facts to bring out the controversy involved in these two applications lie in a narrow compass. The applicants filed a suit in the Court of Munsif, Ghazipur for the issue of a permanent injunction restraining the opposite parties from interfering with their possession over an agricultural plot. The claim was resisted by the opposite parties on grounds inter alia that the Civil Court had no jurisdiction to try the suit. The Munsif framed a preliminary issue on the question of jurisdiction and held that the Civil Court had no jurisdiction. He accordingly ordered the return of the plaint to the applicants for presentation to the proper Court. The applicants sought to challenge that order by filing a Miscellaneous Appeal, but the appeal failed. The petitioners thereupon filed a revision before this Court which was numbered as Revision No. 1777 of 1968.

3. It appears that during the pendency of the Revision, Ram Nandan Upadhyia (Opposite Party No. 10) died, and Miscellaneous Application No. 4130 of 1970 to bring his heirs on the record was filed by the applicants on 10th July, 1970. In this application, supported by an affidavit, it was alleged that Ram Nandan Upadhyia died on 13th April, 1970. The opposite parties resisted the application and alleged in the counter-affidavit that Ram Nandan Upadhyia had died on 31st December, 1969. In view of this allegation and counter-allegation with regard to the date of the death of Ram Nandan Upadhyia, an issue was remitted to the Court below to find out whether Ram Nandan Upadhyia died on 13th April, 1970 or on 31st December, 1969. The Court below returned the finding that he died on 31st December, 1969. The applicants were permitted to file an application u/s 5 of the Limitation Act for the condonation of delay, whereupon they filed Civil Miscellaneous Application No. 14638 of 1970 u/s 5 of the Limitation Act.

In order to appreciate the point involved in the case it would be convenient at this stage to refer to relevant provisions of Order XXII, CPC and the relevant Articles of Limitation Act.

4. Order XXII, Rule 3 (1) provides for bringing the legal representatives of deceased plaintiff on the record when the right to sue does not survive to the surviving plaintiff or plaintiffs alone, and Sub-rule (2) thereof provides the penalty for not bringing the heirs of the deceased plaintiff on record within the period of limitation prescribed. Order XXII, Rule 4, CPC provides for substitution of a deceased defendant where the right to sue does not survive against the surviving defendant or defendants alone, and Sub-rule (3) thereof provides penalty for not bringing the heirs of the deceased defendant on record within the time prescribed by law. Obviously Rules 3 and 4 of Order XXII, CPC relate to substitution of plaintiffs and defendants in a suit. But by virtue of Rule 11 of Order XXII, Rules 3 and 4 are made applicable to the appellants and respondents in appeal as well. Rule 11 reads thus:--

"In the application of this Order to appeals so far as may be, the word "plaintiff" shall be held to include an appellant the word "defendant" a respondent, and the word "suit" an appeal."

These rules, however, do not apply to revisions. Now the question arises whether any period of limitation has been prescribed in the CPC for an application to bring the heirs of a deceased party on record in a revision application.

5. Article 176 of the Schedule of the old Limitation Act (IX of 1908), read thus:

Description of suit.

Period of Limitation.

The date from which period begins to run.

176.

Under the same Code to have the legal representative of a deceased plaintiff or a deceased appellant made a party.

Ninety days

The date of the death of the deceased plaintiff or appellant.

Article 120 of the Schedule attached to the new Limitation Act (XXXVI of 1963) reads thus :?

120.

Under the Code of Civil Procedure, 1938 to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent made a party.

Ninety days

The date of death of the plaintiff, appellant, defendant or respondent, as the case may be.

Thus limitation has been prescribed for bringing on record the heirs of deceased plaintiff or defendant in a suit, and the deceased appellant or respondent in an appeal, and if no application is made within the said period, the penalty contemplated by Order XXII, Rules 3 and 4 would ensue. If a similar period of limitation has been prescribed by the Indian Limitation Act for bringing the heirs of a deceased party on record even in revision applications, the penalty analogous to that contemplated by Order XXII, Rules 3 and 4, CPC would be attracted to revisions as well. The crucial question for determination, therefore, is whether any period of limitation has been prescribed by the Indian Limitation Act with regard to revisions also.

6. In *Bhajju Lal v. Bechay Singh* 1950 All 665 in *Ram Datt Singh and Another Vs. Ajodhia Singh and Others*, , in *Syed Ali Athar v. Syed Kalbe Haider* 1955 All LJ 54 and in AIR 1948 84 (Oudh) it was held that Order XXII, CPC does not apply to revision applications, nor was there any period of limitation prescribed for an application for substitution of names of legal representatives in place of a deceased party in a revision application, yet it was held that the application for

bringing the heirs should be moved within a reasonable time.

The above cases are not of much help; the point in question has now been concluded by the decision of the Supreme Court in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, , *Bombay Gas Co. v. Gopal Bhiva*, wherein it was held that Article 181 prescribed three years" period of limitation in respect of applications under the CPC for which no period of limitation was provided elsewhere.

7. It may be pertinent to read Article 181 of the old Limitation Act of 1908 and Article 137 of the new Act (XXXVI of 1963):

Description of application

Period of Limitation

Time from which period begins to run.

181.

Applications For which no period of limitation is provided elsewhere in the Schedule or by section 43 of the Code of Civil Procedure, 1908.

Three years

When the right to apply accrues.

187.

Any other application for which no period of limitation is provided elsewhere in this Division.

Three years.

When the right to apply accrues.

In *Sha Mulchand and Co. Ltd. (In Liquidation) Vs. Jawahar Mills Ltd.*, the Supreme Court, while dealing with Article 181 of the Limitation Act of 1908, observed:--

"That Article has, in a long series of decisions of most, if not all, of the High Courts, been held to govern only applications under the Code of Civil Procedure. It may be that there may be divergence of opinion even within the same High Court, but the preponderating view undoubtedly is that that article applies only to applications under the Code."

Now, the next question that requires consideration is whether Article 137 of the new Limitation Act also covers an application under the Code of Civil Procedure. Substantially the language of Article 181 of the old Limitation Act is *pari materia* with the language of Article 137 of the new Limitation Act. If Article 181 applies to applications under the Code of Civil Procedure, we see no reason why Article 137 of the new Limitation Act should not apply to applications under the Code of

Civil Procedure. It may or may not apply to applications under other Acts, but there can be no manner of doubt about its applicability to applications under the Code of Civil Procedure. In 1971 All WR 560 a learned Single Judge of this Court held that the residuary Article 137 covers in its ambit applications and objections under special laws or any other law. The Article should not be interpreted narrowly so as to keep it confined to applications under the Code of Civil Procedure.

Even if there be some doubt about the applicability of Article 137 to applications under other Acts, about which we express no concluded opinion, there is not the slightest doubt that Article 137 would cover applications" under the Code of Civil Procedure. The consensus of opinion of the various High Courts has been that Article 181 of the old Limitation Act applied to the applications under the Code of Civil Procedure. Article 137 of the new Limitation Act should also be given a similar meaning. Article 137, being a residuary Article, must be construed ejusdem generis with the other Articles. dealing with applications. As most of the other Articles deal with applications under the Code of Civil Procedure, Article 187 should also be Held to apply to applications! under the Code of Civil Procedure. In AIR 1966 All 530 the Division Bench distinguished the Supreme Court decision in Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, on the ground that the application* in that case was not an application under the CPC but it was an application under Article 133 of the Constitution.

That the application for substitution of heirs in revision is an application u/s 151 of the CPC can admit of no doubt. Therefore, the period of limitation for bringing the heirs of the deceased Opposite Party No. 10 would be three years under Article 137 of the new Limitation Act. The application for substitution was filed within three years of the death of Opposite Party No. 10, so there is no question of abatement or of condonation of delay.

8. Miscellaneous Application No. 4130 of 1970 for bringing the heirs of Ram Nandan Upadhya (Opposite Party No. 10) on record is accordingly allowed and the name of Ram Nandan Upadhya will be removed from the array of opposite parties and in his place the name of Jaddu Upadhya will be brought on record.

9. In the view that we have taken, the other Miscellaneous Application (No. 14638 of 1971) u/s 5 of the Limitation Act has become infructuous and is dismissed.

10. Before parting with the case we would like to observe the desirability of the amendment of the Rules of Court on the Administrative side so as to prescribe a uniform period of limitation of ninety days for bringing heirs of a deceased party even in revision applications. The Rules of the Court have already been amended so as to prescribe a period of ninety days for bringing the heirs of a deceased party in a writ petition under Article 226 of the Constitution, to special appeals and Tax Act references falling under Chapters IX, XXII and XXVTI of the Rules of the Court, by the introduction of Rule No. 38-A Chapter VIII, Rules of Court,

1952, Part I.

11. The revision application will now be placed before the Bench concerned for disposal on merits.