
(2015) 04 MP CK 0007
In the Madhya Pradesh High Court
Case No : Second Appeal No. 162/2009

Chunnilal

APPELLANT

Vs

Hirdaram and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, Order 22 Rule 3, Order 22 Rule 4(3), 100, 151

Citation : (2015) 04 MP CK 0007

Hon'ble Judges : S.R. Waghmare, J.

Bench : Single Bench

Advocate : Harish Joshi, Learned Counsel, for the Appellant; Sameer Athawale, Learned Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.R. Waghmare, J.—By this Second Appeal under Section 100 of Civil Procedure Code, appellant Chunnilal has challenged the judgment and decree dated 1/12/2008 passed by the First Additional Judge, Mandleshwar in Civil Regular Appeal No. 59-A/2006 confirming the decree of the Trial Court.

2. Briefly stated the facts of the case are that respondent No. 2/plaintiff Mukesh s/o Shri Hirdaram had filed a suit bearing C.O.S. No. 165-A/97 regarding the land situated in village Rekhwa, Tehsil Kasrawad, District West Nimar for declaration and injunction. It was resisted by defendant Nos. 2 and 3 by filing separate written statement and by respondent No. 7. The Trial Court after recording the statements passed the decree in favour of the plaintiff and being aggrieved the defendant filed an appeal before the Appellate Court and the Appellate Court had also dismissed the appeal and upheld the decree. And hence, the present appeal.

3. In the peculiar facts and circumstance of the case the sole appellant Chunnilal died and an application under Order 22 Rule 3 read with Section 151 of C.P.C. was filed by the applicants vide I.A. No. 0929/2014 for bringing the proposed

legal representatives of the deceased Chunnilal on record. It was stated that the applicants were not aware of the pendency of the present Second Appeal and they did not know that it has been filed by their father Chunnilal. Only when the Counsel for the respondents informed the Court on 21/11/2014 that appellant Chunnilal expired then the applicants learnt that the appeal is pending before this High Court and after getting the copy of the death certificate the legal representatives of the appellant deceased Chunnilal have filed the applications I.A. Nos. 10929/14, 10930/14 and 10931/14. Counsel submitted that the applicants are the rustic villagers and illiterate and do not know the proceedings and the Court procedure and applicant Nos. 3, 4 and 5 even being the married daughters of the deceased, are residing at their matrimonial homes and the applicant No. 2 being a widow, is residing along with the applicant No. 1, who is also illiterate and rustic villager. Counsel for the appellant submitted that there is some delay in filing the application and it ought to be treated with liberal approach since the applicants are uneducated rustic villagers. To bolster his submissions, Counsel placed reliance on Heera Lal vs. Tijiabai (Smt.) and others 2010(2) MPHT 217 whereby this Court had considered the delay of 10 years in making an application for setting aside abatement. Counsel urged that the Court considering that appellant is an uneducated rustic and agriculturist and was not aware of the legal position about the necessity of bringing legal representatives on record, 10 years" delay was condoned observing that Courts should adopt a justice oriented approach. Application for setting aside abatement as also application for bringing on record the legal representatives of deceased respondent No. 2 was allowed. Counsel further placed reliance on Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRs. and Others, whereby the Apex Court had held that the appellant's ignorance of respondent's death and the delay for non-listing of appeals for considerable time contribute to ignorance of appellant and must be kept in mind and lenient approach was advised for abatement of appeals under Order 22 Rule 4(3) r/w Rule 11 CPC pending in High Court contrasted with those pending in subordinate Courts under Order 22 Rule 4(3) CPC. Hence, Counsel prayed that all the applications be allowed and the abatement be also set aside.

4. Counsel for the respondents has vehemently opposed the submissions put forth by the Counsel for the applicants and the applications filed by the applicants. He has submitted that there were two concurrent findings of the Courts below. The death of the appellant Chunnilal had occurred on 29/3/2010 and there is a delay of 1700 days in filing the appeal. Counsel vehemently urged that it is false to say that applicants had no knowledge of this appeal and they came to know about the appeal on 21/11/2014 through the Counsel for the respondents. Counsel has drawn attention to this Court to the execution proceedings that had been started in the Courts below and in the Civil Suit bearing No. 165-A/1997 the proceeding dated 25/9/2010 clearly indicated that the Counsel for the appellant Pandhari, who appeared in the Court below had stated that the Second Appeal is pending before the High Court and hence the

plea taken by the Counsel for the appellant that the legal representatives especially legal representative No. 1 Pandhari s/o Chunnilal being a rustic villager and did not know the proceedings of the Court procedure or that the Second Appeal was pending is incorrect. Besides, the executing Court had directed the legal representatives to produce the copy of the stay order passed by the High Court in the Second Appeal, which was also not done. Thereafter the lower Court proceedings dated 14/10/2010 and 9/11/2010 also indicated that the Counsel for the proposed applicants failed to file copy of the stay order and he prayed for time.

Counsel placed reliance on Balwant Singh (Dead) Vs. Jagdish Singh and Others, whereby the Apex Court has considered what is sufficient cause for setting aside abatement of suit and condonation of delay in bringing LRs on record and the Court held that

"even if "sufficient cause" has to receive liberal construction, it must squarely fall within concept of reasonable time and proper conduct of party concerned. Liberal construction cannot be equated with doing injustice to the other party. This balance has to be kept in mind by Court while deciding such applications. Expression "sufficient cause" implies presence of legal and adequate reasons. There is no straitjacket formula uniformity applicable to all cases. Test to judge whether or not a cause is sufficient is to see whether it could have been avoided by the party by exercise of due care and attention." Counsel submitted that sufficient cause is not established in the present case since colossal delay of 1700 days has occasioned in filing the application due to the negligence of the proposed appellants. Counsel further relied on Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, whereby the Apex Court has held that the applications filed both for condonation of 883 days" delay in filing petition to set aside dismissal order and for condonation of 3703 days" delay in bringing on record Lrs of deceased respondent that : while finding absence of any explanation to justify delay as well as negligence of part of appellants the High Court had allowed those applications taking view that delay was due to inefficiency, ineptitude and negligence of the Government pleader concerned. The Apex Court however, held that the discretion should be exercised systematically and the Court should be informed by cogent reasons. Liberal approach in considering sufficiency of cause for delay should not override substantial law of limitation, especially when Court finds no justification for delay. The Apex Court held:

"High Court not justified in allowing applications for condonation of delay. High Court failed to exercise its discretion to condone delay in reasonable impartial and objective manner. Hence, application dismissed and appeal of respondents before High Court held to have abated." 5. Considering the above submissions, I find that the bonafides of the legal representatives are in doubt since valid cogent reasons have not been given by the legal representatives of the appellant deceased Chunnilal and the applicants have failed to bring the legal

representatives of the deceased appellant Chunnilal on record in time, despite having received information in the executing Court thus due diligence has not been exercised. The application for condonation of delay is lacking in bonafides. Therefore, also placing reliance on Lanka Venkateswarlu (supra) the application for condonation of delay is hereby dismissed.

6. Consequently the other two applications also cannot be allowed. The appeal stands abated and the appeal is, therefore, dismissed as such.