

(2000) 02 KAR CK 0017

In the Karnataka High Court

Case No : Civil Revision Petition No. 845 of 1995

Damayanthi and Others

APPELLANT

Vs

Sri. Venkateshwara Exhibitors and Others

RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4 (1), Order 22 Rule 4 (2), Order 22 Rule 4 (4)

Citation : (2000) 2 KCCR 1482

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : M.L.N. Reddy and M.S.N. Swamy, for the Appellant; T.S. Mahabaleshwar, for Respondent 1 and Mohandas N. Hegde, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

T.N. Vallinayagam, J.—In the above Civil Revision Petition preferred by the legal representatives of the deceased first Defendant in a suit for recovery of money, the question that is raised is whether the L.Rs. of the Defendant can file a written statement to protect their defence, especially when the defence of the original Defendant was struck off by the Court below and which order was however confirmed by the High Court.

2. The suit is one for recovery of money flowing out of the agreement between the Plaintiff and the Defendant in respect of a Movie. It appears, earlier the defence of the first Defendant was struck off because of the serious misconduct of the deceased Defendant Venugopal and which order passed on I.A. No. VI was confirmed in Civil Revision Petition No. 3284 of 1986 by the High Court. Now, the legal representatives sought permission under Order 22, Rule 4(2) CPC to file written statement. The trial Court has chosen to reject the same.

3. Heard the Counsel.

4. Order 22, Rule 4(1) and (2) reads as follows:

4(1) Where one of two or more Defendants dies and the right to sue does not survive against the surviving Defendant or Defendants alone, or a sole Defendant or sole surviving Defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representatives, of the deceased Defendant to be made a party and shall proceed with the suit.

4(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased Defendant.

It is necessary to note the amendment to Order 22, Rule 4(4) by Karnataka amendment R.O.C. 2526 of 1959, which runs as follows:

Rule 4(4):The Court, whenever it thinks fit, may exempt the Plaintiff from the necessity to substitute the legal representatives of any such Defendant who has been declared ex-parte or who has failed to file his written statement or who having filed it has failed to appear and contest at the hearing; and the judgment may in such case be pronounced against the said Defendant notwithstanding the death of such Defendant and shall have the same force and effect as if it had been pronounced before his death took place.

Thus, it is made clear that if the Defendant is exparte, even non bringing of legal representatives does not affect the Plaintiff's claim and any decree passed will certainly bind the legal representatives as well. Such an extreme position is laid down in law. But in this case, the Defendant, though his defence was struck down has not been made exparte. Therefore, the question is whether the legal representatives of the deceased Defendant can raise the defence?

5. In fact the word used in Rule 4(2) is: "any defence appropriate to his character as legal representative of the deceased Defendant". The meaning of these words shall be kept in mind while considering the defence that may be raised by the legal representatives. In fact the Supreme Court in Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another, and in Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others, has considered the position of law and laid down as follows:

The legal representatives not impleaded in time can be subsequently impleaded.

In Bal Kishan Vs. Om Parkash and Another, , the Supreme Court laid down as follows:

Sub-rule (2) of Rule 4 to Order 22 authorise the legal representative of a deceased Defendants/Respondents to file additional written statement or statement of objections raising all pleas which the deceased Defendants could have raised except those which were personal to the deceased.

6. In the light of the dictum of the Supreme Court, which is the law of the land, the order of the trial Court is not sustainable. The legal representatives of the deceased Defendant must be permitted to file their written statement,

notwithstanding the fact that due to the personal conduct of the deceased Defendant, the defence was struck off. When the decree is ultimately to be granted and if to be enforced on the L.Rs., certainly they must have a say in the matter and that cannot be violation of their right to be heard before anything passed against them, though as legal representatives.

In this view, this Civil Revision Petition is allowed setting aside the order of the trial Court. No costs.