

(1998) 07 DEL CK 0016

In the Delhi High Court

Case No : FAO 278/98

Daya Narain Khatri and Others

APPELLANT

Vs

Sh. Suresh Kumar Gupta and Another

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Succession Act, 1925 — Section 212(1), 212(2)

Citation : (1998) 75 DLT 390 : (1998) 46 DRJ 850

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Mr. Arvind Kumar Goyal, for the Appellant;

Judgement

S.N. Kapoor, J.—This FAO is directed against an order on review application dated 19th March 1998 whereby the learned Additional District Judge modified his order on substitution application, and deleted the condition of filing succession certificate or letter of administration.

2. In proceedings u/s 14 and 17 of the Arbitration Act, 1940, the claimant expired on 26th April 1993. An application under Order 22 Rule 3 CPC for bringing on record the legal representatives of deceased Kishan Lal was allowed "subject to producing the letter of administration/succession certificate with respect to the claim amount in question on or before the final hearing in this case, failing which the application will be dismissed".

3. This condition was removed by the order dated 19th March 1998 by passing the following operative portion of the order:

"...In view of above discussion the order 10.7.96 is modified to the extent that direction to produce succession certificate/Letter of Admn. is recalled. There shall be no need to produce succession certificate or letter of administration. Accordingly this application is allowed. Now fix this matter for final argument on 25.3.98.

4. This order has been challenged on the ground that it was beyond the jurisdiction of the learned Additional District Judge. As a matter of fact, instead of review, an appeal should have been filed.

5. Learned counsel for the petitioner referred to Rabinder Nath Maira and Another Vs. Steelsons Pvt. Ltd. and Others, . Para 7 of the judgment reads as under:

"...If the estate of a deceased person is covered by Section 212 or 213, then the heirs have to get either letters of administration or probate. The heirs cannot get a succession certificate."

6. This is so provided in Section 370 of the Indian Succession Act (hereinafter called "the Act"). Section 212 of the Act reads as under:

212. Right to intestate's property._(1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, Indian Christian or Parsi.

7. It appears that sub-section (2) of Section 212 provides that sub-section (1) shall not apply in case of a Hindu individual dying intestate in respect of any part of his property. Section 212 does not require a letter of administration in relation to any part of the property of a Hindu who has died intestate. Consequently, the question of requiring letter of administration or probate would not arise.

8. In so far as Section 213 of the Act is concerned, this relates to rights of an executor or legatee. It is not the case of either of the parties that any legal heir of deceased claimant are executors or legatees. Therefore, Section 213 would certainly not be attracted to the claim in a petition u/s 14 and 17 of the Arbitration Act. Moreover, Section 6(1) of the Arbitration Act, 1940 provides that an appropriate agreement shall not be discharged by the death of any party thereto either as regards the deceased or any other party, but shall, if such event be enforceable by or against the legal representatives of the deceased. Therefore, death of claimant will not make the proceedings infructuous.

9. As regards Section 214 of the Indian Succession Act, it provides a bar against passing against a debtor of a deceased person for payment of his debt to a person claiming as successor to be entitled to the effects of the deceased person, or any other part thereof, excepting on production of probate or letter of administration, or a certificate granted u/s 31 or Section 32 of the Administrator General's Act, 1913 etc. There is yet another aspect. Sub-section (2) of Section 214 defines debt as including any debt except rent, revenue or profits, payable in respect of land used for agricultural purposes.

10. Claim in an award is or is not a "debt"; is an interesting and relevant

question. Demand for money or property in as of right is a claim like insurance claim and not a "debt", for claim is not liquidated, matured or fixed. It is contingent on several factors. It is just a "Contingent claim"; one which has not accrued and which is dependent on some future event (of making award the rule of the court) that may or may not ever happen. On the other hand, a "debt" is "a sum of money due by certain and express agreement", "A specific sum of money owing to one person from another, indicating not only obligation or debtor to pay but right of creditor to receive and enforce payment". Therefore, Section 214 may not apply.

11. Supposing Section 214 applies, son of the claimant, being an heir represents the estate of deceased person; and as a legal representative he is bound to be brought on record for the right to sue survives in his favor generally, and u/s 6(1) of Arbitration Act, 1940 specifically. Provisions of Order 22 Rule 3 are of mandatory nature on filing of an application by a legal representative. It is not conditional or contingent on filing of probate or letter of administration etc. Section 214 provides a bar in passing the decree. There is no bar to proceed in such a matter for the language is "No court shall pass a decree..."; and language is not "No suit shall be filed" or "No suit shall proceed". Even in such a situation, a harmonious construction has to be put on the language of Order 22 Rule 3 CPC and provisions of Section 214 of Succession Act. Consequently, while the application under Order 22 Rule 3 can neither be dismissed for want of letter of administration or probate etc. nor such an order could be conditional in terms of Section 214; nor the proceedings in the suit could be stayed for want of such a letter etc.; at the most, a decree may not be passed. Substitution of a legal representative and passing a decree are two different things. They are not substitute of each other.

12. In the aforesaid circumstances, it cannot be said that the learned Additional District Judge had committed any error by correcting a legal error apparent on the face of record which had crept in the earlier order. Such a matter could certainly be reviewed and as such there does not appear any force in this appeal. I dismiss the same accordingly.