
(2009) 02 RAJ CK 0153
In the Rajasthan High Court

Ganpat and Others

APPELLANT

Vs

Mangla Ram and Others

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141

Citation : (2009) 4 RLW 3041

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioners have challenged the order dated 06.01.1975 passed by the Revenue Appellate Authority ("the RAA" for short), and two orders passed by the Board of Revenue, namely order dated 20.04.1979 and 31.08.1979.

2. The writ petition was filed by the petitioners against Mangla Ram and others in the year 1981. However, during the pendency of the writ petition, Mangla Ram, the respondent No. 1, expired in 1983. Despite his death, no application was moved by the petitioners for bringing his legal representatives on record till 07.09.1988. The respondents raised an objection that the application for bringing the legal representatives was inordinately delayed by five years. And yet, no application for condonation of delay had been filed along with the application for bringing the legal representatives on record. Therefore, on 16.05.1996 i.e. after eight years of having filed the application for bringing the legal representatives on record, an application for condonation of delay was filed by the petitioners. After hearing both the parties, vide judgment dated 24.07.1997, the learned Single Judge dismissed the application and held that the writ petition has abated. Therefore, the writ petition was also dismissed as having abated.

3. Subsequently, the petitioners filed an intra-court appeal, registered as D.B. Civil Special Appeal (Writ) No. 731/1998, wherein they challenged the judgment

dated 24.07.1997. After hearing both the parties, the learned Division Bench, vide its order dated 07th February, 2008, has remanded this case to the learned Single Bench and has framed two points for the consideration of this Bench. The two points are as under:

(1) Whether the ratio indicated in Ram Sumiran (Supra) can be made applicable in the present facts and circumstances of the case?

(2) Whether counsel for the deceased informed the Court about the death of the deceased under Order 22 Rule 10A of the Code of Civil Procedure?

4. Before deciding these two points, it is imperative that the factual matrix of the case be narrated in detail. Admittedly, the petitioners and Mangla Ram were residents of the same village. They had been involved in litigation since 1962. Therefore, a reasonable inference can be drawn that the petitioners knew Mangla Ram as resident of his village. Admittedly, Mangla Ram died in 1983. According to the application dated 16.05.1996, petitioner No. I came to Jaipur in September, 1986 to enquire about the case from his advocate. The advocate asked petitioner No. I whether all the parties are alive? Whereupon, the advocate was told that Mangla Ram has expired. According to the said application, the application for bringing the legal representative on record was filed on 07.09.1986. However, a perusal of the application clearly reveals that the said application was in fact filed on 07.09.1988 and not on 07.09.1986. It is also not in dispute that from 1988 till 16.05.1996 no applications had been filed for condonation of delay. For the first time, an application for condonation of delay was filed on 16.05.1996 and that too after the respondents had raised objection about the inordinate delay and about the lack of application for condonation being submitted. It is also admitted that after hearing both the parties vide order .dated 24.07.1997, the learned Single Judge dismissed the application for bringing the legal representative on record. A bare perusal of the judgment dated 24.07.1997 clearly reveals that both the facts and law have been discussed in great detail.

5. Mr. N.L. Pareek, the learned Counsel for the petitioners, has contended that according to the observation of the Hon''ble Supreme Court in the case of Ram Sumiran and Others Vs. D.D.C. and Others, considering the illiteracy rampant in the country, people cannot be expected to know that in case a respondent were to die, during the pendency of the writ petition, he needs to be substituted by his legal representative. Therefore, in the said case, despite the lapse of six years in not bringing the legal representative on record, the Hon''ble Supreme Court had condoned the delay of six years. According to the learned Counsel, even in the present case, the petitioners are illiterate villagers who did not know that after the death of Mangla Ram his representatives need to be brought on record in order for them to pursue the writ petition. Thus, the delay in filing the application for bringing the legal representative was not intentional, but was due to their ignorance of law. Thus, the present case is squarely covered by the case of Ram Sumiran and Ors. (Supra).

6. Secondly, according to the learned Counsel, the case of Puran Singh and others Vs. State of Punjab and others, is inapplicable to the present case. For, the said judgment dealt with the Rules of Punjab and Haryana High Court. According to Rule 32, the provisions of C.P.C. were applicable to writ jurisdiction provided the provisions were not inconsistent with the Rules of High Court. But according to the Rules of this High Court, provisions of C.P.C. are not applicable to writ proceedings. Thus, according to the learned Counsel, the case of Puran Singh and Ors. (supra) is distinguishable on factual matrix.

7. Thirdly, according to a Division Bench decision of this Court in Raj Vaidhya Pt. Ram Dayalu Sharma (Since deceased represented by L.Rs. Smt. Santosh Lata Devi) v. Board of Revenue 1988(1) RLR 1014 the provision of C.P.C. are inapplicable to writ proceedings. Therefore, the requirement of Order 22 cannot be brought into the picture. Hence, the delay in filing the application for bringing the legal representative should be condoned and the petitioner should be permitted to bring the legal representative on record.

8. On the other hand, Mr. S.K. Bhargava, the learned Counsel for the respondents, has raised the following contentions before this Court : firstly, that the petitioners have tried to mislead the Court by claiming in the application dated 16.05.1996 that they informed the advocate in 1986 that Mangla Ram had died and immediately filed the application for bringing the legal representative on 07.09.1986. According to him, the said application was not filed till 07.09.1988. Since, the advocate was informed about Mangla Ram's death, in September 1986, there is no explanation for the inordinate delay of two years in filing the application for bringing the legal representatives in 1988.

9. Secondly, ignorance of law is no defence.

10. Thirdly, in Puran Singh and Ors. (supra), the Hon"ble Supreme Court had concluded that the provision of C.P.C. would not be applicable to a writ petition. Yet in case the petitioner or the respondent expires and the cause of action continues to exist against the legal representatives, then the opposite party is bound to bring the legal representatives on record "within a reasonable time". According to the Apex Court what is a reasonable time would depend upon the facts and circumstances of each case. However, as a guideline Article 120 of the Limitation Act can be used. But the Court would also have to consider the explanation given by the party seeking condonation of delay. Thus, the High Court has to consider the sufficiency of cause for the delay. The Apex Court further observed that "At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final." According to the learned Counsel, after the death of Mangla Ram a valuable right has accrued to the legal representatives which should not be disturbed lightly by permitting the petitioner to bring the legal representatives on record.

11. Fourthly, the learned Counsel has contended that a bare comparison of Ram Sumiran & Ors. (supra) and Puran Singh & Ors. (Supra) clearly reveals that the judgments have been passed by Coordinate Benches of the Apex Court. However, in the case of Ram Sumiran and Ors. (supra), the apex Court has not discussed the entire issue with regard to the applicability of provision of C.P.C. in a writ proceedings. The said issue has been discussed threadbare by the Apex Court in the case of Puran Singh (supra). Moreover, the case of Puran Singh and Ors. (supra) is a subsequent judgment. Furthermore, notwithstanding the existence of Rule 32 of the Punjab & Haryana High Court, the Apex Court has observed that the provision of C.P.C. would not be applicable to a writ proceeding. Therefore, the present case is covered by Puran Singh's case (supra) and not by the case of Ram Sumiran and Ors. (supra).

12. Fifthly, that according to the Rajasthan High Court Rules, provision of C.P.C. are inapplicable to the writ proceeding. Therefore, the requirement of Order 22 Rule 10A cannot be invoked in the present case.

13. Sixthly, the Court is required to look at the "sufficiency of the cause" in order to condone the delay in filing the application for bringing the legal representatives on record.

14. Lastly, although the provision of C.P.C. are inapplicable to the writ proceeding, but the provisions of the Limitation Act are applicable. Therefore, the petitioner should have filed the application for bringing the legal representatives on record within ninety days as required by Article 120 of the Limitation Act.

15. In rejoinder Mr. N.L. Pareek, has submitted that the petitioners had no intention of misleading the Court by giving a wrong date about filing of the application for bringing the legal representatives on record. In fact, in the application dated 16.05.1996 the date of filing of the application for bringing the legal representatives was inadvertently shown as 07.09.1986 whereas it should have been shown as 07.09.1988. However, such technicalities should not come in way of doing substantive justice to the petitioners. In order to buttress this contention the learned Counsel has relied upon the case of K. Rudrappa Vs. Shivappa, He has further submitted that writ jurisdiction, being a extraordinary jurisdiction of this Court, is not subject to technical rules of Limitation as contained in Article 120 of the Limitation Act. In order to buttress this contention the learned Counsel has relied on the case of Hemraj Vs. Income Tax Recovery Officer, Jodhpur,

16. We have heard the learned Counsel for the parties and have perused the judgment 24.07.1997 and the order dated 07th February, 2008 and have examined the application mentioned above and have also considered the case law submitted at the Bar.

17. This case brings to the forefront of the conflict between the reality of the country and the requirement of law. Illiteracy is a grave national problem which needs to be solved. It is equally true that ignorance of law is no defence. But

illiteracy cannot be used as a mere excuse to justify one's lethargy and inefficiency. Even, an illiterate villager would be well aware of the fact that he and another villager are in litigation over decades. Even an illiterate villager would be aware of the fact that in case something were to happen to his adversary, he should bring the fact to the knowledge of his lawyer. Afterall, the relationship between the litigant and the lawyer is a relationship of trust and communication. In the present case, the petitioner being resident of the same village as Mangla Ram and having contested litigations with Mangla Ram since 1962, the petitioner would be well aware of the fact that Mangla Ram had expired in 1983. According to normal human conduct the petitioner would be expected to inform his lawyer that Mangla Ram has expired. Yet from 1983 till 1986 the petitioner kept a studied silence over Mangla Ram's death. According to the application dated 16.05.1996, when the petitioner came to Jaipur in September 1986, he was asked by his lawyer whether all the parties were alive or not. It is only when this information was solicited from him that he informed the lawyer that Mangla Ram had expired. This information was given to the advocate in September 1986, yet the application for bringing the legal representatives was not filed by the advocate till 07.09.1988 i.e. after a delay of two years. Even, if an illiterate villager is unaware of the requirement of law, a lawyer cannot plead ignorance of law. Therefore, it was the sacred duty of the lawyer to immediately file an application for bringing the legal representatives on record. There is no explanation for the inordinate delay of two years in filing the said application in 1988.

18. In order to condone the delay a sufficient cause has to be shown by the party. However, in the present case, but for the excuse of illiteracy, no sufficient cause has been shown. It is true that in the case of Ram Sumiran (supra), the Apex Court had condoned a delay of six years on the ground of illiteracy. But the said judgment does not enunciate a universal principle. Moreover, in the said judgment the Supreme Court has not dealt with the application or non-application of provision of C.P.C. in a writ proceeding. It also has not dealt with the application or non-application of Article 120 of the Limitation Act. These points, in fact were, debated, discussed and decided by the Hon'ble supreme Court in the case of Puran Singh (supra). Thus, while considering the issue whether inordinate delay should be condoned, the case of Ram Sumiran (supra) is inapplicable to the present case. In fact, the issue of condoning the delay is squarely covered by the decision of the Apex Court in Puran Singh Case (supra). Hence, the case of Ram Sumiran (supra) is inapplicable to the facts and circumstances of the present case.

19. Although, it has been argued that inadvertently, it was mentioned in the application dated 16.05.1996, that the application for bringing the legal representative was filed on 07.09.1986, and that such technicalities should not come in by way of doing justice, the said contention is unacceptable. For, firstly the said contention was not raised before the learned Single Judge when the matter was argued earlier before this Court. For, this contention is not reflected

in the judgment dated 24.07.1997. This contention has been raised after a lapse of almost a decade. Secondly, there is no proof of the fact that the date 07.09.1986 has been mentioned inadvertently in the application dated 16.05.1996.

20. The second issue referred by the learned Division Bench is no longer *res integra*. As far back as 1978, this Court had clearly observed in the case of Hemraj (Supra) that the provision of Section 141 and Order 22 of C.P.C. are not applicable to a writ proceeding pending before the Rajasthan High Court. Similar view has also been observed by this Court in the case of Raj Vaidhya Pt. Ram Dayalu Sharma (supra). Moreover both the learned Counsel for the parties are *ad idem* that the provision of C.P.C. are inapplicable to a writ proceeding. Since the provisions of C.P.C. are inapplicable, requirement of Order 22, Rule 10A of the C.P.C. cannot be pressed into service.

21. The only issue now remains to be decided is whether the provision of Limitation Act are applicable to the writ proceeding or not. In The State of Gujarat Vs. Patil Raghav Natha and Others, Mansaram Vs. S.P. Pathak and Others, and in Khoday Distilleries Limited v. Scotch Whisky Association and Ors. (2008) 10 SCC 723, the Apex Court dealt with cases where no limitation period was prescribed for doing of an act. The Apex Court held that even where no limitation period is prescribed, the act has to be done within a "reasonable time". What is a reasonable time would depend on the facts and circumstances of the case. Similar view has also been held by a Division Bench of this Court in the case of Anandi Lal v. State of Rajasthan and Ors. RLR 1995(1) 555 and in the case of State of Rajasthan v. Teja and Ors. 2005 (2) WLC 53. To decipher the reasonableness of time one can turn to the Limitation Act to see the limitation prescribes by the statute. Although, in the case of Hemraj (supra), this Court has held that Article 120 of the Limitation Act is inapplicable to the writ proceeding, but in the case of Puran Singh (supra), Hon"ble Supreme Court has held that Article 120 of the Limitation Act can be used as a guideline in order to decide the reasonableness of the time required for doing of an Act. Limitation Act prescribes ninety days for submission of an application for bringing on record the legal representatives of the parties who have expired. Thus, the application should have been filed by the petitioner within three months. However, in the present case, the said application was filed after an inordinate delay of five years. Hence, the application has been filed way beyond the reasonable time.

22. In the result, the application for bringing the legal representatives on record is, hereby, rejected and it is directed that the writ petition shall abate due to the death of respondent No. 1, Mangla Ram.