

(2014) 07 RAJ CK 0088

In the Rajasthan High Court

Case No : Civil Restoration Application No. 194/2013 in Civil First Appeal No. 159/2001

Inderjeet

APPELLANT

Vs

Suresh Kumar

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10A, Order 22 Rule 4, Order 22 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2014) 07 RAJ CK 0088

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : B.K. Vyas, Advocate for the Appellant; Jitendra Chopra, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Arun Bhansali, J.—The S.B. Civil First Appeal No. 159/2013 was dismissed as abated by this Court by order dated 10.05.2013 as the appellants failed to bring on record the legal representatives of respondent Suresh Kumar S/o. Late Ram Kishan, who had died on 17.08.2011.

2. Instead of filing application under Order XXII, Rule 9 CPC and to take steps for bringing on record the legal representatives under Order XXII, Rule 4 CPC, the present application seeking restoration of the appeal was filed by the appellant-applicants alongwith an application seeking condonation of delay.

3. Though a prayer seeking restoration was made in the application, no application for bringing on record the legal representatives of the deceased Suresh Kumar was filed. Subsequently, an application under Order XXII, rule 4 and Order XXII, Rule 9 CPC has been filed for bringing on record the legal representatives of the deceased Suresh Kumar and for setting aside the abatement and a prayer is being made that the application originally filed u/s 5

of the Limitation Act be treated as application seeking condonation of delay in filing application under Order XXII, Rule 9 CPC.

4. A detailed reply to all the applications have been filed by the respondents. It is, inter alia, indicated that the conduct of the appellant has been grossly negligent inasmuch as despite filing application under Order XXII, Rule 10A CPC, the legal representatives were not brought on record in time and in another appeal pertaining to the same property wherein the appellants are parties, similar application under Order XXII, rule 10A was filed and therein, the appellants filed application under Order XXII, Rule 4 CPC and the legal representatives were taken on record, which conclusively indicates the knowledge of death of Suresh Kumar and his legal representatives so far as the appellants are concerned and, therefore, the entire basis of the application seeking condonation is misconceived rather incorrect.

5. Learned counsel for the applicants submits that despite diligence, the applicants could not approach the counsel in time alongwith the names of legal representatives of the deceased Suresh Kumar and in view of the fact that another appeal is pending consideration before this Court, it would be appropriate that the delay in filing the application be condoned and the abatement be set aside. It is further submitted that the respondents can be compensated by way of costs.

6. Learned counsel for the respondents reiterated the submissions made in the reply as noticed hereinbefore and prayed that no case for condonation of delay has been made out and the application deserves to be dismissed.

7. I have considered the rival submissions and perused the record of the case.

8. From the perusal of record of the present restoration application itself, it is apparent that the appellant-applicants have been dealing with the present litigation in a most negligent and slipshod manner, neither proper instructions have been imparted to the counsel nor any steps etc. were taken in time to ensure expeditious disposal of the present application, despite the fact that the applicants were facing an execution proceedings before the trial court.

9. Be it as it may, the fact of pendency of the proceedings pertaining to the same property wherein the parties are same before this Court cannot be lost sight of and it would be appropriate that the delay in filing the application seeking setting aside of abatement/restoration is condoned.

10. However, looking to the conduct of the appellant-applicants in dealing the matter as indicated hereinbefore, the applicants would pay a cost of Rs. 5,000/- to the respondents. Subject to the payment of cost within a period of three weeks from today, the application under Order XXII, Rule 4 and Order XXII, Rule 9 CPC are allowed. The legal representatives of the deceased Suresh Kumar are ordered to be taken on record. The abatement is set aside.

11. The amended cause title filed by the appellant-applicants is also taken on

record. The same be detached from the record of the present application and alongwith the order be placed in the record of S.B. Civil First Appeal No. 159/2001 by the office.

12. The stay application filed alongwith the restoration application is disposed of accordingly.