

(2015) 01 RAJ CK 0165

In the Rajasthan High Court

Case No : Company Application No. 15/1989 in Company Petition No. 10/1980

Jaipur Spinning and Weaving Mills Ltd.

APPELLANT

Vs

Ganesh Narain R. Poddar and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10A, Order 22 Rule 4, Order 22 Rule 4(3), Order 22 Rule 4(4), Order 22 Rule 9
Companies Act, 1956 — Section 543
Limitation Act, 1963 — Section 3

Citation : (2015) 01 RAJ CK 0165

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

Advocate : Gaurav Sharma, for the Appellant; R.C. Joshi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—The matter comes up on an application under Order 22 Rule 4(3) CPC praying for dismissal of the company application No. 15/1989 on the ground that the legal representatives of deceased Ganesh Narain R. Poddar, Pawan Kumar having not been brought on record within time provided for under Order 22 Rule 4 CPC but only later, the delay having escaped the notice of the Court in its order dated 5.3.2010.

2. The case set up by the applicants Mr. Ajay Kumar G. Poddar and Mr. Pawan Kumar is that their father Ganesh Narain R. Poddar was a party in the proceedings under section 543 of the Companies Act, 1956 (hereinafter "the Act of 1956") but expired on 27.9.2005. And the factum of Ganesh Narain R. Poddar's death came to the knowledge of the Official Liquidator in as much as his counsel appearing before the Court in an appeal filed by Ganesh Narain R. Poddar (DB Special Appeal (Companies Act) No. 34/1991) was so informed when the matter came up before the Court on 6.3.2006 whence it was recorded that Mr. Ganesh Narain R. Poddar had died and therefore the appeal was dismissed as

having abated. Yet no efforts were made by the Official Liquidator to bring on record the legal representatives of Late Ganesh Narain R. Poddar on various dates when the application No. 15/1989 came up before the Company Court till 5.3.2010 when the delay in moving the application under Order 22 Rule 4 CPC was not brought to the notice of the Court nor did the Court stay alive to its obligation to dismiss an application for substitution of a deceased by legal representatives filed beyond the prescribed period. It has been submitted that the filing of the application under Order 22 Rule 4 CPC on 4.3.2010 without as much as reference to Order 22 Rule 9 CPC for setting aside abatement which in the meantime obtained by operation of law was of no event and the Company Court allowing the application on 5.3.2010 exceeded its jurisdiction. It has been submitted that the Hon"ble Apex Court in V.M. Salgaocar and Bros. Vs. Board of Trustees of Port of Mormugao and Another, has held that in terms of section 3 of the Limitation Act it is the bounden duty of the Court to address the suit (or application) on the issue of limitation no matter the opposite party did not raise the issue and dismiss the suit or application, as the case may be, if out-side limitation unless delay is condoned on a proper application. Counsel submits that the doctrine of waiver has no relevance to the Limitation Act nor consent of a defendant/non-applicant can circumvent the inexorable effect of limitation expiring or confer jurisdiction on the Court to entertain or address the matter on merits. It has been submitted that in the circumstances albeit the applicants Ajay Kumar G. Poddar and Mr. Pawan Kumar have participated in the proceedings under section 543 of the Act of 1956 subsequent to the order dated 5.3.2010 when Pawan Kumar was impleaded as a party respondent in the application under section 543 of the Act of 1956, it cannot be held that they waived their objections to the application under Order 22 Rule 4 CPC being filed beyond limitation. The impleadment of Pawan Kumar under the Court's order dated 5.3.2010 was contrary to the provisions of Order 22 Rule 4 CPC and hence is non est and this Court should even at this stage in effect recall its order dated 5.3.2010 dismiss the company application No. 15/1989 as having abated.

3. Mr. Gaurav Sharma counsel appearing for the O.L. submits that the application filed is misconceived and liable to be dismissed at the threshold. He submits that the Order 22 Rule 10A CPC mandates that the counsel appearing for the deceased defendant-non-applicant is obliged to inform the plaintiff applicant with regard to the death of the party represented by him and also detail the names of his L.Rs. and their addresses for their impleadment. But this was admittedly not done in the present case. Counsel submits that the knowledge from collateral proceedings with regard to the death of the deceased Ganesh Narain R. Poddar was not sufficient to circumvent the statutory obligation of the counsel for the defendant under Order 22 Rule 10A CPC and until such an application was filed with details of name and address of the L.Rs. of deceased defendant, limitation for filing an application under Order 22 Rule 4 CPC would not begin to run. Counsel further submits that on the doctrine of adequate representation the company application No. 15/1989 could not have been dismissed for the reason

of abatement, for therein aside of Ganesh Narain R. Poddar his son Ajay Kumar G. Poddar was also co-defendant/non-applicant. It has been submitted that with the deceased being thus represented by his own son on record as a non-applicant, on the doctrine of adequate representation the application under section 543 of the Act of 1956 could not in the circumstances have been dismissed for having abated. It is further submitted that the application under consideration filed on 16.1.2015 seeking recall of the order dated 5.3.2010 whereby Pawan Kumar Mr. Ajay Kumar were impleaded as legal representative of the deceased Ganesh Narain R. Poddar is also otherwise liable to be dismissed on the ground of limitation. The Schedule to the Limitation Act does not specifically provide for limitation for filing such an application-which would therefor be governed under Article 137 of the Limitation Act. Thereunder the cause of action having arising on 5.3.2010 with the substitution of deceased Ganesh Narain R. Poddar with his L.Rs. Ajay Kumar Poddar and Pawan Kumar an application there-against for recall of the said order had to be moved within a period of three years. This was not done. The application was filed after a lapse of four years.

4. Having heard counsel I am of the considered view that the deceased Ganesh Narain R. Poddar being a co-defendant-non-applicant with his son Ajay Kumar G. Poddar in the application under section 543 of the Act of 1959 filed by the Official Liquidator, his death would not result in abatement of the proceedings even on the ground of Official Liquidator not timely filing an application under Order 22 Rule 4 CPC as alleged. The presence of Ajay Kumar as co-non-applicant in my considered opinion on the death of his father Ganesh Narain R. Poddar, the other non-applicant in the O.L.'s application under Section 543 of the Act of 1956 tantamounted to adequate representation of the deceased and the company application in the circumstances could have been proceeded with by the Court even without as much as impleadment of Mr. Pawan Kumar-the other son of the deceased. Aside of above as pointed out by Counsel for the O.L, Mr. Ganesh Narain R. Poddar despite service did not file reply to the application under section 543 of the Act of 1956 and hence in terms of Order 22 Rule 4(4) CPC it was not even incumbent upon the Court to implead his legal representatives. The Court could continue with the proceedings in the absence of such impleadment. Finally, the Counsel for the defendant Ganesh Narain R. Poddar not having moved the Order 22 Rule 10A CPC application before the Court stating the names and addresses of the deceased, no question of delay in filing the Order 22 Rule 4 CPC application by the Official Liquidator could arise what of abatement for failing to move Order 22 Rule 4 CPC application in time notwithstanding knowledge of death with the O.L., counsel in other proceedings. Knowledge of death in such proceedings did not confer details of names and addresses of L.Rs. of the deceased non-applicant- details necessary for their impleadment.

5. In the circumstances I find no force in the application. Accordingly dismissed.