

(1976) 01 BOM CK 0016

In the Bombay High Court

Case No : Civil Revision Application No. 418 of 1972

Kanis-Fatms and Another

APPELLANT

Vs

Mohd. Habib and Another

RESPONDENT

Date of Decision : 23-01-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9

Citation : AIR 1976 Bom 303 : (1976) MhLj 63

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Advocate : M.A. Waheed, for the Appellant;

Judgement

1.This is a revision against the judgment and decree made by the Judge, Small Causes, Nagpur in Civil Suit No. 1638 of 1969.

2. The original suit was filed against Smt. Qureshakhatoon and one another. She died during the pendency of the suit. As per Exh. 34, plaintiff filed an application to set aside abatement, for, the Court had recorded on 20-09-1971 that the suit has already abated against defendant No.1 i.e. Quresha-Khatun. Without issuing notice to the proposed legal representatives on Exh. 34, the court proceeded to set aside that order and further impleading them as party - defendants to the suit. After the notice was received of the suit, objection was raised on behalf of these defendants and while delivering the judgment, the learned Judge overruled the objection observing that no such notice was necessary and further that the question whether these defendants are possessed of any property can be decided in execution.

3. This aspect of the judgment is under challenge.

4. Having made an order that the suit had abated against defendant No.1 because she died and steps were not taken within time permitted by law, the approach of the learned Judge is on the face of it contrary to the provisions of order 22 of the code of Civil procedure. On 30-08-1971, the court had made an

order that the suit against defendant No.1 had abated and rejected the application at Exh. 33. After that the procedure followed is entirely contrary to the contemplation of order 22 C.P.C Under Rule 9 of that order it is only when sufficient cause is shown, the court can set aside the abatement of the suit. That cannot be done without issue of notice to the parties who are sought to be impleaded as legal representatives and who have legal right to object and of hearing before impleading any one as legal representative and who have legal right to object and of hearing before impleading any one as legal representative. Want of notice in such proceedings goes to the root of the matter.

5. That being the position the impugned judgment and decree has to be set aside. The judge, Small Cause will now take up the case from the stage of Exh. 34 and issue notice to the legal representatives proposed to be impleaded in place of defendant NO. 1 and after considering their objections if any proceed to find out whether there is sufficient cause established to set aside the abatement and also who are the legal representatives if abatement is set aside then the suit would proceed.

6. Revision thus is allowed. For no fault of the applicants they have been subjected to costs. They are therefore entitled to costs from the opponents of this revision.

7. Revision allowed.