

**(2012) 08 RAJ CK 0104**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 1384/08**

Kanti Dutt Mishra and Others

APPELLANT

Vs

Mangi Lal and Others

RESPONDENT

**Date of Decision :** 01-08-2012

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4  
Constitution of India, 1950 — Article 227  
Limitation Act, 1963 — Section 5

**Citation :** (2012) 08 RAJ CK 0104

**Hon'ble Judges :** Bela M. Trivedi, J

**Bench :** Single Bench

**Advocate :** G.S. Rathore, for the Appellant; R.M. Jain, for the Respondent

**Final Decision :** Dismissed

## Judgement

Hon"ble Ms. Justice Bela M. Trivedi

1. The present petition has been filed by the petitioners-original plaintiffs challenging the order dated 22.1.08 passed by the Civil Judge (J.D.) and Judicial Magistrate 1st Class, East, Ajmer City, Ajmer (hereinafter referred to as "the trial court") in Civil Suit NO. 161/98, whereby the trial court has dismissed the application of the petitioners to bring on record the legal representatives of the deceased defendant No.1 Mangi Lal under Order xxii Rule 4 of CPC. The short facts of the present petition are that the present petitioners-defendants have filed the suit seeking permanent injunction against the respondents-defendants in respect of the suit property. During the pendency of the suit respondent No.1 expired on 4.8.2000. The petitioners filed an application under Order xxii Rule 4 of CPC for bringing the legal representatives of the deceased Mangi gal alongwith the application u/s 5 of the Limitation Act seeking condonation of delay occurred in filing of the said application on 8.12.04. The said application has been dismissed by the trial court vide the impugned order. Being aggrieved by the said order, the present petition has been filed under Article 227 of the Constitution of

India.

2. It has been submitted by the learned counsel Mr. G.S. Rathore for the petitioners that earlier the application was filed by the then learned counsel appearing for the petitioners on 31.7.03 seeking deletion of the name of the deceased Mangi Lal on the ground that no relief was claimed against him, however consequently realising the mistake of the said counsel, the application was filed for bringing on record the legal representatives of the deceased Mangi Lal. Relying upon the judgment of the Apex Court in case of Ram Bakal Singh vs. sosamat Monako Devi (dead) & ors. AIR 1998 Sc 277, he has submitted that the party should not suffer due to the mistake on the part of the counsel. He has also relied upon the decision of the Apex Court in case of K. Rudrappa vs. Shivappa 2005 CDR 176 (Sc) to submit that technical objections should not come in the way to do full and complete justice between the parties. Relying upon the judgment of Apex Court in case of Ram Nath Sao alias Ram Rath sahu & ors. vs. Gobardhan Sao & ors. AIR 2002 Sc 1201 he has submitted that the expression "sufficient cause" u/s 5 of the Limitation Act should receive liberal construction, so as to administer the justice between the parties.

3. However, the learned counsel Mr. R.M. Jain for the respondents has submitted that the petitioners knew about the death of Shri Mangi Lal as back as in the year 2000, however the application for bringing on record his heirs was filed after a gross delay of four years without any justifiable reason. Relying upon the proceedings of revenue case between the same parties, Mr. R.M. Jain for the respondents submitted that the application for bringing on record the legal representatives of Shri Mangi Lal was filed in the said revenue case in the year 2000 and the copy of the same was also received by the learned counsel for the petitioners and, therefore, the petitioners were aware about the death of Shri Mangi Lal in the year 2000. Relying on the decisions of this court in case of Phool chand vs. Ghisi Lal & ors. 1984 RJR 132 and in case of state of Rajasthan vs. smt. virma Devi & ors. 2002 (5) WLC (Raj.) 399, he has submitted that in absence of proper explanation given for sufficient cause, the gross delay in filing the application under Order xxii Rule 4 of CPC should not be allowed.

4. Having regard to the submissions made by the learned counsel for the parties and to the documents on record and more particularly the impugned order passed by the trial court it appears that the petitioners were aware about the death of defendant No.1 Shri Mangi Lal as back as in the year 2000, however the application under Order xxii Rule 4 for bringing his legal representatives on record was filed in the year 2004. In the said application it is mentioned that earlier one application for deleting the name of Shri Mangi Lal was given due to mistake of the counsel for the petitioners and subsequently the present petition for bringing on record the legal representatives of Shri Mangi Lal was filed. There is no explanation given by the petitioners in the application under order xxii Rule 4 of CPC as to when they came to know about the death of said Mangi Lal and why no application was earlier moved for bringing his heirs on record. In absence

of any cause much less sufficient cause shown in the application, the trial court has rightly rejected the application of the petitioners. It is also pertinent to note that the petitioners had suppressed the fact about the proceedings pending before the revenue court in which the heirs of said Mangi Lal were sought to be brought on record in the year 2000 within the knowledge of the petitioners. No explanation whatsoever has been given as to why the application under xxii Rule 4 of CPC was not given within the prescribed time limit. under the circumstances the trial court has rightly considered the facts and circumstances of the case and dismissed the application of the petitioners. There cannot be any disagreement with the proposition of law laid down by the Apex Court in the judgment relied upon by the learned counsel for the petitioners, however the same are not applicable to the facts of the present case. The petitioners having failed to point out any sufficient cause for condonation of gross delay of about four years, the trial court has rightly dismissed the application of the petitioners. There being no illegality or infirmity in the order passed by the trial court, this court is not inclined to interfere with the same. The petition being devoid of merits deserves to be dismissed and is accordingly dismissed.