

(2001) 10 DEL CK 0025

In the Delhi High Court

Case No : IA 4824/96 and 8306/96 in Suit No. 227-A/84

Kunj Behari and Another

APPELLANT

Vs

K.D. Churiwala and Sons and Others

RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Arbitration Act, 1940 — Section 20

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 22 Rule 4

Limitation Act, 1963 — Section 5

Citation : (2001) 10 DEL CK 0025

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Atul Batra, for the Appellant; D.D. Verma, for the Respondent

Judgement

V.S. Aggarwal, J.—Shri Kunj Behari and another had filed a suit/petition u/s 20 of the Arbitration Act. The respondents so arrayed were M/s K D Churiwala & Sons, a Hindu Undivided Family with respondent 6 as Karta. The said suit has since been contested. On 7.9.95 on behalf of defendants, the learned counsel for the defendant/respondent pointed that Shri K D Churiwala, respondent no respondent no (SIC)

respondent no.6 have died.(SIC)

respondent was not aware o (SIC)

deaths. Thereupon this court

may take necessary steps (sic) representatives of the deceased respondents. The matter was directed to be listed before the Joint Registrar on 19th October, 1995.

2. Perusal of the record reveals that on 19th October, 1995 no application was filed for bringing on record the legal representatives of respondents 2 and 6 and the JR had adjourned it to 9th February, 1996. On 9th February, 1996 again the JR recorded that no application as such has been filed for bringing on record the

legal representatives of respondents 2 and 6. Keeping in view the time that has elapsed it was directed to be listed before the court on 18th March, 1996. On 18th March, 1996 it was adjourned by this court for 22nd May, 1996.

3. On behalf of the plaintiffs an application under Order 22 Rule 4 CPC (IA 4824/96) was filed dated 21st May, 1996 asserting that during the pendency of the suit it had come to the notice of the plaintiff that defendants 2 and 6 have died. Despite various attempts they could not know the date of the death nor could they find as to who are the legal representatives. To their best of knowledge Therefore they prayed that the wife of Shri K P Churiwala and the wife of Shri M P Churiwala and his sons should be impleaded as the legal representatives.

4. Another petition Section of the Limitation Act had been filed seeking condensation of delay (IA 8306/96). It has been alleged that various attempts were made to know the exact date of deaths of defendants 2 and 6 but they could not find the same. The counsel for the defendants had brought this fact to the notice of the plaintiff's counsel in September, 1996. Thereupon the counsel for the plaintiff communicated this fact to the plaintiff. They could only find the legal representatives of the deceased as already mentioned above and in these circumstances it was prayed that delay may be condoned.

5. In the reply filed both the applications have been opposed. It has been pleaded that plaintiff had been informed about the death of respondents 2 and 6 on 7th September, 1995 and no steps had been taken to implead the legal representatives. The application had been filed after 8-1/2 months of the knowledge of the plaintiff's and Therefore, the suit must be held to have abated qua two defendants referred to above and that there is no ground further to condone the delay. Order 22 Rule 10a had been added by the Act 104 of 1976 with effect from 1st February, 1977. It has been provided that whenever a pleader appearing for a party comes to know about the death of the party he shall inform the court and thereupon the court shall give notice to the other party. The purpose of enacting the provisions is obvious that at times the litigants does not know about the death of other party and Therefore a duty has been cast on the counsel who comes to know about the death of other party should inform the court in this regard. In the present case the same has been so done and learned counsel for the defendants had pointed this fact in court.

6. Admittedly the application so filed in the present case is after the period of limitation for impleading the legal representatives had expired. The short question that comes up for consideration is as to whether delay in filing should be condoned and legal representatives impleaded or not.

7. The Supreme Court in the case of Union of India (UOI) Vs. Ram Charan and Others, has considered the scope of Order 22 Rule 4 Code of Civil Procedure. It has been held that there is no question of considering the expression sufficient cause liberally either because the party is the government or the question arises

in connection with impleading the legal representatives of the respondent. The court is not to readily accept whatever the appellant or the party claiming delay to be condoned alleges. It is the duty of the appellant to make regular enquiries. It is for the appellant or the person to show the reasons which lead to the play delay and thereupon the court has to held and find if there was sufficient cause in condoning the delay or not.

8 Two decisions of this court can also be taken note of. In the case of Satnam Singh and Another Vs. Mohinder Singh and Others, this court recorded that when one of the respondents had died during pendency of the appeal and this fact was not even known to the counsel there was sufficient ground in the circumstances for condensation of delay and for legal representatives to be imp leaded.

9. A Division Bench of this court in the case of Kartar Chand etc. Vs. Jowala Singh, also concluded in similar lines that while dealing with application u/s 5 of the Limitation Act to condone the delay in taking steps to bring on record the legal representatives and for setting aside of the abatement, the court has to consider whether the applicant was ignorant of the death and whether such ignorance in view of the court contributed to the delay which should or should not be condoned. These principles of law are not disputed.

10. Reverting back to the facts of the present case it has to be remembered that respondent No. 1 is a Hindu Undivided Family. Respondent no.6 since deceased was stated to be the karta. It is true that the learned counsel for the defendants had informed in September, 1995 about the death of respondents 2 and 6 but even he was not aware about the exact date of their deaths. The plaintiffs had been informed. Admittedly, there is delay in filing of the application to implead the legal representatives but the reason forthcoming is that plaintiffs could not know the exact date of death and even the names of the legal representatives. If such a difficulty arises and a person cannot find out the names of the legal representatives the law of procedure will act accordingly. It is not shown that the plaintiffs were aware of the names of the legal representatives and Therefore there is no ground for condensation of delay. Once this fact has come to know that there was difficulty in knowing the names of the legal representatives the reasons are obvious that it must be taken that there was sufficient grounds for condensation of delay. Accordingly, both IAs are allowed delay in filing of application in is condoned on payment of Rs.2000/- as costs. The legal representatives referred to above in the application are arrayed as such.

11. List it for further proceedings on 8th March, 2002.