

(2010) 12 SHI CK 0468
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 130 of 2003

Lalit Kumar and Another

APPELLANT

Vs

Lachhmi Devi

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 39 Rule 2A, 151

Citation : (2010) 12 SHI CK 0468

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.

CMP (M) Nos. 1347 and 1348 of 2010

1. By means of these two applications, the Petitioners have prayed that the Legal Representatives of deceased Lalit Kumar, Petitioner No. 1 who expired on 27.7.2009, be brought on record and the delay, if any, in filing the application be condoned. For the reasons stated in these applications, the same are allowed and the proposed L.Rs of Petitioner No. 1 are ordered to be brought on record. They are already represented by Sh. Deepak Gupta, Advocate. Amended memo of parties, which has been filed, is ordered to be taken on record. The applications stand disposed of.

CMPMO No. 130 of 2003

2. This petition is directed against the order dated 30.8.2003 passed by the learned Sub Judge (2), Shimla whereby he rejected the application filed under Order 13 Rule 2 read with Section 151, CPC. By means of this application, the Petitioners wanted to place on record some photographs and negatives to prove their case. It is apparent from the order itself that the name of the photographer who had taken the photographs was mentioned in the list of witnesses but

according to the Petitioners, when the record was being examined, it was found that inadvertently, the photographs and the negatives had not been placed on the file of the proceedings under Order 39 Rule 2-A in which evidence had to be led.

3. Sh. Deepak Gupta, Advocate states that the learned Counsel for the Petitioners before the learned Trial Court was under the impression that photographs and negatives had been filed in the proceedings before the learned Trial Court or in certain proceedings which had been filed in the High Court. The learned Trial Court dismissed the application mainly on the ground that order 13 Rule 2, CPC is no longer on the statute book. The application, in question, was moved in March, 2002 and amendment to the CPC was made only in July, 2002. Therefore, deletion of order 13 Rule 2, CPC would have no effect on these proceedings.

4. Ms. Seema Guleria, learned Counsel for the Respondent submits that this is a case where the Petitioners have been grossly negligent. For two years, their case was listed for evidence in the proceedings under Order 39 Rule 2-A and this application has been filed after a lapse of two years.

5. Even if the contention of Ms. Guleria is accepted, the averments made in the petition and in the application clearly show that the mistake which took place was on the part of the counsel of the Petitioners and not the Petitioners and, therefore, the Petitioners cannot suffer for the same. In any event, the delay in such a case is not fatal to the proceedings and the Respondent can be compensated by costs.

6. In view of the above discussion, the application under Order 39 Rule 2, CPC is allowed subject to payment of Rs. 1000/- as costs. The Petitioners are permitted to place on record the photographs and negatives and also to examine the photographer who had taken these photographs to prove the same. The parties through their counsel are directed to appear before the learned Civil Judge (Sr. Division), Shimla on 12.1.2011. In case there is no Judge presiding over Court No. 2 then the matter shall stand transferred to the Court of the learned Civil Judge (Sr. Division), Shimla since this is an old matter. In case there is a Presiding Officer in Court No. 2, the matter shall continue in his Court.

7. The petition is disposed of in the aforesaid terms with costs as aforesaid.