
(2021) 10 RAJ CK 0097

In the Rajasthan High Court

Case No : S. B. Civil Restoration No. 89 Of 2019

Legal Representatives Of Loku Ram And Others

APPELLANT

Vs

Legal Representatives Of Bihar And Others

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 6 Rule 17, Order 22 Rule 4(5)(b),
Order 22 Rule 9(2), Order 41 Rule 19
Limitation Act, 1963 — Section 5

Citation : (2021) 10 RAJ CK 0097

Hon'ble Judges : Rameshwar Vyas, J

Bench : Single Bench

Advocate : Dr. R.D.S.S. Kharlia, Anil Gupta, Shreekant Verma

Final Decision : Allowed

Judgement

Rameshwar Vyas, J

The present application for restoration has been filed under Order XLI, Rule 19 read with Section 151 C.P.C. by the defendants-appellants with the prayer for recalling of the Order dated 07.09.2017 passed by this Court in S.B. Civil Second Appeal No. 66/2008 (LR's of Loku Ram Vs. Bihari Lal), whereby the second appeal, against sole respondent - Bihari Lal, was dismissed as abated.

The facts of the case in short are that plaintiff Bihari Lal, legal representatives of whom are respondents herein, filed a civil suit for specific performance of the agreement to sell the property, which was dismissed by the trial court vide Judgment dated 17.02.2005, however, plaintiff - Bihari Lal was held entitled to receive double of the consideration amount paid by him to defendant - Lokuram, whose legal representatives are appellants herein. Plaintiff - Bihari Lal preferred first appeal against rejection of his suit, which was allowed by the First Appellate Court vide Judgment dated 08.01.2008. Aggrieved by the judgment of the First Appellate Court, legal representatives of defendant - Lokuram filed second appeal before this Court on 08.02.2008. On 28.02.2008, the second appeal

was admitted and execution of the decree impugned passed by the First Appellate Court was stayed by this Court. The interim stay order granted by this Court was made absolute during the pendency of the appeal on 04.05.2011. Afterwards, respondent - Bihari Lal (plaintiff herein) expired on 27.05.2014. However, the information regarding death of respondent - Bihari Lal was furnished by learned counsel representing the respondent first time before this Court on 04.08.2017, on which date, at the request of learned counsel for the appellants, time was granted for taking necessary steps for substituting legal representatives of sole respondent - Bihari Lal. On 07.09.2017, the appeal was dismissed as abated on the ground that the appellants did not take any steps for bringing legal representatives of the sole respondent on record. Being aggrieved with the Order dated 07.09.2017, legal representatives of defendant - Lokuram have filed this application for restoration praying for recalling the order dated 07.09.2017. Along with application restoration application, an application under Section 5 of the Limitation Act seeking condonation of delay in filing the restoration application supported by affidavit of appellant - Ganesh Kumar, has been filed.

Since the present restoration application has been wrongly filed under the provisions of Order XLI, Rule 19 C.P.C., an application under Order VI, Rule 17 read with Section 151 C.P.C. has been filed by the appellants seeking amendment in the cause title of the restoration application to the extent that the same may be read as "restoration application under Order XXII, Rule 4(5)(b) & 9(2) read with Section 151 C.P.C." instead of "restoration application under Order XLI Rule 19 read with Section 151 C.P.C.", which is allowed and the application for restoration is being decided under amended provisions.

In reply to the restoration application, it has been, inter alia, averred that counsel for the appellants did not take any steps for bringing legal representatives of the sole respondent on record as per order, hence, the appeal was dismissed as abated. The appellants were aware of the death of plaintiff-respondent - Bihari Lal. The appellants have intentionally and deliberately caused delay in taking legal representatives of respondent - Bihari Lal on record. Hence, the delay cannot be condoned.

Heard learned counsel for the parties on the applications and perused the material on record.

Learned counsel for the appellants while relying upon the judgments of the Hon'ble Apex Court in the cases of Banwari Lal (D) by LR's and Anr. Vs. Balbir Singh (AIR 2015 Supreme Court 3573) and Prahlad Shankarrao Tajale and Ors. Vs. State of Maharashtra through its Secretary (Revenue) and Anr. (AIR 2018 Supreme Court 1313), contends that legal representatives of respondent - Bihari Lal could not be brought on record on account of lack of knowledge regarding names of legal representatives of the respondent. The appellants tried their best in this regard, however, when the execution proceeding was instituted against them, they came to know the names of legal representatives of respondent -

Bihari Lal and afterwards, they immediately filed this restoration application.

On the contrary, learned counsel for the respondents contends that the appellants are not bonafide in filing the application. The Gram Panchayat had issued certificate regarding legal representatives of respondent - Bihari Lal on 16.07.2014. The appellants could get the necessary information under Right to Information Act, 2005 also.

Having regard to the rival submissions of the learned counsel for the parties and the law laid down by the Hon'ble Apex Court in the judgments referred above, so also after perusal of the record, it emerges that the information of death of respondent - Bihari Lal for the first time was given by his pleader before this Court on 04.08.2017. On that day, the appellants sought time to take requisite steps in this regard. However, on the next date i.e. 07.09.2017, the second appeal filed by the appellants was dismissed as abated. It is true that after receiving the information regarding death of respondent - Bihari Lal, the appellants failed to file requisite application within time. This restoration application has been filed by the appellants on 05.03.2019 after almost 19 months. The reasons furnished by the appellants for delay occasioned in filing this application have been mentioned in the application. As per the averments in the application, they came to know about the names of legal representatives of deceased respondent - Bihari Lal only after execution proceedings were filed against them.

The second appeal sought to be restored, relates to the rights in the immoveable property. The First Appellate Court reversed the judgment of the trial court and decreed the suit of plaintiff - Bihari Lal for specific performance of agreement. In the considered opinion of this Court, it would not be justified to deny the appellants an opportunity to get their second appeal decided on merits merely on the procedural aspects of law. As held by the Hon'ble Apex Court in the various judgments, the provisions of Order XXII C.P.C. are not penal in nature. It is rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to procedural aspects of law.

In the facts and circumstances of the case and in the interest of justice, the application under Section 5 of the Limitation Act filed by the appellants is allowed. The delay occasioned in filing the application under Order XXII, Rule 4(5) (b) & 9(2) read with Section 151 C.P.C. is condoned. The restoration application is also allowed and the order of abatement dated 07.09.2017 passed by this Court is recalled. The second appeal is restored to its original number.

Office to proceed accordingly.