
(2019) 08 MP CK 0067

In the Madhya Pradesh High Court

Case No : Second Appeal No. 333 Of 1984

Madanlal Lrs Smt. Durgawati And Ors.

APPELLANT

Vs

Laxminarayan @ Laxman

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 22 Rule 4, Order 22 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2019) 08 MP CK 0067

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Milind Ramesh Phadke, Mahesh Narayan Tiwari

Final Decision : Allowed

Judgement

Heard on I.A.No.126/2016 (application under Order 22 Rule 4 read with Section 151 of the CPC), 128/2016 (application under Order 22 Rule 9 read with Section 151 of CPC) and 127/2016 (application under Section 5 of the Limitation Act).

The aforesaid three applications have been filed on account of death of respondent No.1/plaintiff - Laxminarayan. He died on 23.01.2002. Notices were issued to the proposed legal heirs and Shri Mahesh Narayan Tiwari, learned counsel has filed Vakalatnama on behalf of legal heirs and also filed reply to the aforesaid three applications. Since, there is a delay in filing the application under Order 22 Rule 4 read with Section 151 of the CPC, therefore, application under Order 22 Rule 9 read with Section 151 of the CPC and application under Section 5 of the Limitation Act have also been filed.

According to the appellant, present second appeal was filed and vide order dated 05.02.1985 this appeal was admitted for final hearing. Notices were issued to the respondents. On 16.08.2001 counsel for the respondent No.1 informed the Court about the death of respondent No.2 Bal Krishna but the date of death was not disclosed. The appellant was directed to take necessary steps for bringing the

legal heirs of deceased Bal Krishna on record. On 31.08.2001 time was sought to file appropriate application for bringing legal representatives of respondent no.2 Bal Krishna on record. Again one month's time was granted on 22.10.2001 to take appropriate steps.

On 28.01.2002, learned counsel appearing for the legal heirs of deceased appellant pleaded no instructions, therefore, this Court vide order dated 28.01.2002 has dismissed the appeal in default for appearance of appellant. The legal heirs of the appellant had no knowledge about the dismissal of the second appeal, therefore, after the period of 11 years they filed M.C.C.No.607/2013 against the legal heir of respondent No.1 and 2 death. The said MCC was passed by the legal heir of respondent No.1 and vide order dated 12.03.2015. The MCC was allowed and second appeal has been restored to its original number at the stage of 28.01.2002.

After its restoration the appellant filed two applications under Order 22 Rule 4 read with Section 151 of the CPC for bringing legal heirs of respondent No.1 and 2 on record. Thereafter on 11.01.2016, 4 more applications were filed for setting aside abatement and condonation of delay. By order dated 11.01.2016, this Court issued notice to the proposed legal heirs.

Shri Mahesh Narayan Tiwari, learned counsel appearing on behalf of legal heirs of respondent No.1/plaintiff submits that this appeal had already been dismissed as abated, therefore, no proceedings can take place in this appeal. Even in the MCC, the application for bringing legal heirs were not allowed and second appeal was restored against the dead person, hence, these applications are liable to be rejected and appeal be dismissed as abated. He further submits that against the order dated 13.03.2015, passed in M.C.C.No.607/2013, Review Petition No.1464/2017 has been filed. In support of his contention, he has placed reliance over the judgement passed in the case of Jaladi Suguna (Deceased) Through LRs Vs. Satya Sai Central Trust and Others, reported in 2008(8) SCC 521.

So far as objection of bringing legal heirs of respondent Nos.1 and 2 in the MCC is concerned, MCC was filed by the legal heirs for the appellant for restoration of appeal. The said MCC was filed against the legal heirs and in the said MCC, there was no application under Order 22 Rule 4 of the CPC because respondent Nos.1 and 2 did not die during the pendency of MCC. The MCC was directly filed against the legal heirs of respondents no.1&2. Even after restoration of the second appeal legal heirs are required to be brought on record in the appeal itself, therefore, the appellant has filed application for bringing legal heirs of respondent Nos.1 and 2 on record.

The Apex Court in the case of Banwarilal v/s Balbir Singh [(2016) 1 SCC 607] has held that the rules of procedure under Order 22 CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. Para 10 of the judgment is reproduced below :-

"10. In Sital Prasad Saxena v. Union of India (1985) 1 SCC 163, it was observed

that the rules of procedure under Order 22 CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained."

Admittedly, respondent No.1 died on 23.01.2002 and immediately within 5 days this appeal has been dismissed on 28.01.2002. Thereafter MCC was filed in the year 2013 and second appeal was restored on 13.03.2015 and after restoration immediately applications have been filed. Once, this Court has condoned the delay of 11 years in restoration of the MCC, therefore, same delay is liable to be condoned in this second appeal also. This Court cannot take a contrary view against the view already taken by the coordinate bench in the M.C.C.No.607/2013. Hence, application under Section 5 of the Limitation Act is allowed. Delay in filing application for setting aside the abatement is hereby condoned.

In view of the above, the abatement of appeal is set aside. The appeal is restored. Consequently, application under Order 22 Rule 4 read with Section 151 of the CPC is also allowed.

Heard on I.A.No.129/2016 (application under Order 22 Rule 4 read with Section 151 of the CPC), 125/2016 (application under Section 5 of the Limitation Act) & 130/2016 (application under Order 22 Rule 9 read with Section 151 of CPC).

The aforesaid three applications have been filed on account of death of respondent No.2/defendant. Since, there is a delay in filing the application under Order 22 Rule 4 read with Section 151 of the CPC, therefore, application under Order 22 Rule 9 read with Section 151 of the CPC and application under Section 5 of the Limitation Act have been filed.

According to the appellant, present second appeal was filed and vide order dated 05.02.1985 this appeal was admitted for final hearing. Notices were issued to the respondents. On 16.08.2001 counsel for the respondent No.1 informed the Court about the death of respondent No.2 Bal Krishna. The date of death was not disclosed. The appellant was directed to take necessary steps for bringing the legal heirs of deceased Bal Krishna on record. On 31.08.2001 time was sought to file appropriate application for bringing legal representatives of respondent no.2 Bal Krishna on record. Again one month's time was granted on 22.10.2001.

On 28.01.2002, learned counsel appearing for the legal heirs of deceased appellant pleaded no instructions, therefore, this Court vide order dated 28.01.2002 has dismissed the appeal in default for appearance of appellant. The legal heirs of the appellant had no knowledge about the dismissal of the second appeal, therefore, after the period of 11 years they filed M.C.C.No.607/2013 against the legal heir of respondent No.1 and 2 death. The said MCC was passed

by the legal heir of respondent No.1 and vide order dated 12.03.2015. The MCC was allowed and second appeal has been restored to its original number at the stage of 28.01.2002.

Admittedly, respondent No.2 Bal kishan also died during pendency of appeal and appeal dismissed on 28.01.2002. Thereafter MCC was filed in the year 2013 and second appeal was restored on 13.03.2015 and after restoration immediately applications have been filed. Once, this Court has condoned the delay of 11 years in restoration of the MCC, therefore, same delay is liable to be condoned in this second appeal also. This Court cannot take a contrary view against the view already taken by the coordinate bench in the M.C.C.No.607/2013. Hence, application under Section 5 of the Limitation Act is allowed. Delay in filing application for setting aside the abatement is hereby condoned.

In view of the above, the abatement of appeal is set aside. The appeal is restored. Consequently, application under Order 22 Rule 4 read with Section 151 of the CPC is also allowed.

Requisition be send for summoning the records of the Courts below.

List after receipt of record in the week commencing 26th August 2019.

It is made clear that no further adjournment shall be granted.