
(1995) 07 BOM CK 0016

In the Bombay High Court

Case No : Civil Revision Application No. 556 of 1992

Madhukar Suryawanshi

APPELLANT

Vs

Laxmanrao Suryawanshi

RESPONDENT

Date of Decision : 31-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, Order 22 Rule 4, 115, 141, 151
Limitation Act, 1963 — Article 120, 137

Citation : (1996) 2 BomCR 432 : (1995) 2 CivCC 616 : (1995) 2 MhLj 608

Hon'ble Judges : L. Manoharan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L. Manoharan, J.—In this C.R.A. the applicant has filed C.A. No. 518/95 for impleading the legal representatives of deceased 3rd and 4th respondent. Respondent No. 3 died on 5-5-1994 and respondent No. 4 died on 29-12-1994. He has yet filed two other applications. C.A. No. 520 of 1995 is for setting aside the abatement and C.A. No. 519 of 1995 is for condoning the delay in setting aside the abatement. These two applications are filed under the impression that Order 22, Code of Civil Procedure, is applicable in a proceeding u/s 115, Code of Civil Procedure. The learned Counsel for the applicant would submit that these two applications were filed on mistaken impression that Order 22 is applicable. Now the stand taken by the learned Counsel is that it is not Article 120 of Limitation Act which is applicable for impleading the legal representatives of the deceased party in a proceeding u/s 115 C.P.C. but it is only the residuary article, Article 137, that is applicable as no specific provision is provided for in the Act. Limitation for impleading the legal representatives in a proceeding u/s 115, Code of Civil Procedure.

2. The whole argument rested on the point that section 141, Code of Civil Procedure, is applicable only in original proceedings and not in a proceeding u/s 115, Code of Civil Procedure, and neither section 115 nor the provisions in Order

22 make Order 22 specifically applicable to the proceeding under the said section. Accordingly, Order 22 cannot be invoked to hold that on failure to implead the legal representatives of the deceased party within 90 days prescribed under Article 120 of Limitation Act, the proceedings would abate so far as the said deceased party is concerned. The learned Counsel for the non-applicants, Mr. M.S. Deshpande, on the other hand maintained, section 141 in terms would apply and if so, certainly the application for impleading the legal representatives ought to come within 90 days of the death of the deceased party as governed by Article 120 Limitation Act and the application having been not filed within the period prescribed under Article 120 Limitation Act, abatement has set in. The learned Counsel submitted, the revision must be deemed to have been abated, though an application u/s 5 of Limitation Act is filed for condoning the delay in filing the application for setting aside the abatement. According to the learned Counsel, there is no substantial ground alleged in the application u/s 5 of Limitation Act. Therefore, that application for condoning the delay has to be dismissed. Consequently, according to him, as the applications for setting aside the abatement and for condoning the delay in filing the application for setting aside the abatement are liable to be dismissed, the application for impleading legal representatives too has to be dismissed.

3. Now, the short question which arises for consideration is, whether Order 22, Code of Civil Procedure, can be made applicable to a proceeding u/s 115, Code of Civil Procedure, with the aid of section 141, Code of Civil Procedure. The argument of the learned Counsel for the applicant rested on the decision of this Court in the case of, *Manohar Govindrao Siras v. Ramchandra Govindrao Siras* 1975 Mah.L.J. 373. In that decision it was specifically held that in a matter u/s 115, Code of Civil Procedure, Order 22 will not apply and the revision is not governed by section 141, Code of Civil Procedure, and that legal representatives in such case can be impleaded by invoking section 151, Code of Civil Procedure. A reading of that decision particularly paragraph 5, would show that the learned Judge has relied on the decision of this Court in the case of *Hafasji v. Mangalgi* AIR 1946 Bom 201 and quoted with approval the observations therein. Therein it is pointed out that though Order 22 applies to all suits and appeals, it need not necessarily follow that it so applies to a proceeding u/s 115 C.P.C. with the aid of section 141 of C.P.C. It is pointed out in the said decision that Their Lordships of the Privy Council in 22 I.A. 44, have laid down that the proceedings spoken of in section 141 of the Code refer only to original matters in the nature of suits such as proceedings in probates, guardianship and so forth. Therefore, it was observed that revisional application is not an original application in the nature of suit. The learned Judge of this Court in the said decision did not accept the contrary view expressed in AIR 1938 Mad 115 as the said decision failed to consider the decision of the Privy Council in 22 I.A. 44. Then the decision proceeds to point out that Lahore High Court also took the same view in the case of *Mohd. Saddat Ali Khan v. The Administrator, Corporation of City of Lahore* AIR 1949 Lah. 186 . The learned Judge also refers to a decision of Full Bench of Rajasthan High Court

in the case of Babulal and Another Vs. Mannilal, in support of the conclusion that section 141 is not applicable to a proceeding u/s 115, C.P.C. A Full Bench of the Allahabad High Court in the case of Chandradeo Pandey and Others Vs. Sukhdeo Rai and Others, also took the same view. The learned Counsel Mr. Deshpande, attempted to argue that the said decision of Bombay High Court cannot be held to hold the field after the amendment to section 141, Code of Civil Procedure, by the amending Act 104 of 1976. After the amendment, section 141 reads as under:

"141. Miscellaneous proceedings.

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable in all proceedings in any Court of Civil Jurisdiction.

Explanation - In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution."

All that is done by the amendment is to incorporate an explanation to section 141. By the explanation the proceedings under Order IX of C.P.C. is also made a proceeding within the meaning of section 141, of C.P.C. and also proceeded to add that the proceeding will not include the proceeding under Article 226 of the Constitution. There was a conflict of opinion as to whether for a proceeding under Order IX, whether section 141 is applicable. Now by the amendment to section 141, the said section is made applicable to a proceeding under Order IX also. Incidentally it has to be noted that section 141 is made applicable to appeals also by virtue of Order 22, Rule 11 of C.P.C. In the said context by necessary implication it will follow, section 141 of C.P.C. cannot apply to any proceeding other than those which is in the nature of original proceeding mentioned in the Code, which a proceeding u/s 115 is not.

4. Once the position is thus clear, it will be idle in the circumstance, to contend that in a proceeding u/s 115 of C.P.C. the provision of Order 22 is attracted. The position would be thus that as no specific provision is applicable to the situation of impleadment of legal representatives of a deceased party in civil revision proceedings, the provisions of section 115, C.P.C., can be invoked. The question whether when power u/s 115 is invoked, law of Limitation is applicable, does not arise for consideration in this case as even assuming that for a proceeding u/s 115 of C.P.C. the residuary article - Article 137 of Limitation Act - is applicable, the application for impleadment has already been filed within three years of the death of respondents 3 and 4. I am in full agreement with the decision reported in 1975 Mah. L.J. 373, cited supra. The amendment to section 115 of C.P.C. does not alter the law as aforesaid so far as a proceeding u/s 115 of CPC is concerned. Therefore, C.A. No. 518 of 1995 for impleadment of legal representatives of deceased respondents 3 and 4 is to be allowed and the legal representatives are to be impleaded. The said application is allowed. Civil Applications No. 517 of 1995, 519 of 1995 and 520 of 1995 are dismissed as irrelevant. The civil

applications stand disposed of, as indicated above.