
(1999) 01 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Second Appeal No. 48 of 1996

Mewar Kalal Nyati Sangh

APPELLANT

Vs

Jaivi and Others

RESPONDENT

Date of Decision : 06-01-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10A, Order 22 Rule 9

Citation : AIR 1999 Raj 148 : (2000) 3 CivCC 25 : (1999) 1 RLW 609 : (1999) 2 WLC 118 : (1999) 1 WLN 203

Hon'ble Judges : Amaresh Ku. Singh, J

Bench : Single Bench

Advocate : R.K. Thanvi, for the Appellant; Yash Purohit, for the Respondent

Final Decision : Allowed

Judgement

Amaresh Ku. Singh, J.—This second appeal is directed against the judgment and decree passed by the learned Additional District Judge No. 1, Jodhpur in Civil Appeal No. 13/95 whereby the learned Additional District Judge No. 1, dismissed the appeal and confirmed the decree dated 23rd December, 1994 passed by the learned Additional Civil Judge (Jr. Division) No. 1, Jodhpur in Civil Suit No. 92/93.

2. The appellant filed the Civil Suit No. 892/ 93 against the defendant-Ismail Khan for abatement on recovery of arrears of rent. During the pendency of the suit, the defendant-Ismail Khan expired on 5-2-94. The information about the death of the defendant-Ismail Khan was given to the trial Court by the learned Counsel for Ismail Khan on 3rd March, 1994 when the case was taken up for hearing. On 3-3-94, the plaintiff-appellant's counsel was present and he came to know about the death of the defendant-Ismail Khan. The application for bringing on record the legal representatives of the defendant-Ismail Khan and setting aside the abatement was filed in the trial Court on 25th May, 1994 after a delay of about 20 days. In his application, the plaintiff-appellant stated that he had come to know about the death of the defendant 15 days ago. The learned trial Court after hearing the counsel for the parties, dismissed the application filed by

the plaintiff-appellant under Order 22, Rule 9 and Order 22, Rule 4 of the CPC by order dated 23rd December, 1994 on the ground that the delay in filing the applications was not sufficiently explained.

3. The plaintiff-appellant preferred an appeal against the order of abatement passed by the trial Court on 23rd December, 1994. The appeal was heard and finally disposed of by the Additional District Judge No. 1, Jodhpur by the judgment dated 13th December 1995. The learned Additional District Judge No. 1, Jodhpur dismissed the appeal and upheld the order dated 23rd December, 1994 passed by the trial Court. Feeling aggrieved by the judgment and decree passed by the Courts below, the plaintiff has filed this second appeal. The appeal was admitted on 26th August, 1996 for the disposal of the solitary question, whether in the facts and circumstances of the case, the Court should have allowed the application for setting aside abatement. Hence, the only question to be decided in this appeal is whether the Courts below should have allowed the applications filed by the plaintiff-appellant under Order 22, Rule 9 and Order 22, Rule 4 of the Civil Procedure Code.

4. At the very outset, it may be pointed out that the provisions contained in Rule 10-A of Order 22 of the CPC are entitled to be taken into consideration because of their importance. Rule 10-A of Order 22 of the CPC reads :--

"10-A. Duty of pleader to communicate to Court death of a party.-- Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract, between the pleader and the deceased party shall be deemed to subsist."

5. The importance of Rule 10-A of Order 22 of the CPC was considered by the Hon'ble Supreme Court in Gangadhar and Another Vs. Raj Kumar, of the report, the Hon'ble Supreme Court observed:--

"Rule 10-A which has been added in Order XIII of the CPC by the Amending Act of 1976 provides that when a pleader appearing for a party to the suit come to know of the death of the party, he shall inform the Court about it and the Court thereafter shall issue notice to the other party. In the case of an appeal, the word "suit" has to be read as "appeal". This provision was introduced specifically to mitigate the hardship arising from the fact that the party to an appeal may not come to know about the death of the other party during the pendency of the appeal but when it is awaiting its turn for being heard, The appeal lies dormant for years on end, one cannot expect the other party to be a watchdog for day to day survival of the other party. When the appeal on being notified for hearing is activated, knowledge occasionally dawns that one or the other party has not only died, but the time for substitution has run out and the appeal has abated. In order to see that administration of justice is not thwarted by such technical procedural lapse, this very innovating provision has been introduced. Whereby a duty is cast upon the learned Advocate appearing for the party who comes to

know about the death of the party to intimate to the Court about the death of the party represented by the learned counsel and for this purpose a deeming fiction is introduced that the contract between dead client and lawyer subsists to the limited extent after the death of the client."

6. With respect, it appears that the words "Order XIII" have been printed in the report on account of a printing mistake in place of "Order XXII" of the Civil Procedure Code.

7. A bare reading of Rule 22, Order 10-A shows that the counsel for the deceased party has been visited with the statutory duty to intimate to the Court in which the suit or appeal is pending, about the death of the party. Once, the Court is informed about the death of a party, a statutory duty is imposed on the Court to inform the other party to the suit or appeal about the death of the deceased. The expression "the other party" in Rule 10-A of Order 22 of the Civil Procedure Code, may in suitable cases be interpreted as meaning the party to the suit or appeal and not only the counsel of such party. In the instant case, the impugned orders passed by the Courts below do not indicate that the provisions of Rule 10-A of Order 22 of the CPC were taken into consideration by them. In the order dated 23rd December, 1994, there is nothing to indicate that the Court gave information to the plaintiff about the death of the defendant Ismail Khan. In any case, the order passed by the trial Court shows that the plaintiff-appellant's counsel was informed about the death of the defendant on 3-3-94 when the case was called for hearing. It appears that the appellant's case in the trial Court as well as in the appellate Court was that he came to know about the death of the defendant 15 days before the filing of the applications by him. There was nothing before the Courts below to infer that the cause of delay pointed out by the plaintiff-appellant in his applications was untrue or was false. It is quite possible that the letters sent by the counsel for the plaintiff, to the plaintiff might have reached with delay.

8. In view of above reasons, the omission on the part of the trial Court and of the first appellate Court to take into consideration, the provisions contained in Rule 10-A of Order 22 of the CPC and to further disbelieve the plaintiff-appellant, without sufficient cause as to the date on which he came to know about the death of the defendant calls for interference with the impugned judgments of the trial Court and the first appellate Court. It is a fit case in which the technical objection raised against the applications filed by the plaintiff-appellant under Order 22, Rule 9 and Order 22, Rule 4 of the CPC should not have been allowed to succeed as they are likely to defeat the ends of justice.

9. I, therefore, allow this appeal. The order passed by the trial Court on 23-12-1994 and the judgment as well as the decree dated 13-12-1995 passed by the first appellate Court are hereby set aside. The application under Order 22, Rule 9 of the CPC is allowed and the abatement of the suit is set aside. The plaintiff-appellant's application to bring on record the legal representatives of the deceased-defendant is hereby allowed. In the circumstances of the case, the

parties shall bear their own costs. The appellant shall appear before the trial Court on 15-2-1999. The suit shall be restored back to its original number and after bringing the legal representatives of the defendant on record, the suit shall be heard and decided in accordance with law.