
(1995) 08 PAT CK 0021
In the Patna High Court
Case No : Civil Review No. 39 of 1994 (R)

Mohd. Alauddin

APPELLANT

Vs

Bibi Jaibunnissa and Others

RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1995) 2 BLJR 1156

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Deb, J.—This Review petition has been filed by the abovenamed person, who alleges himself to be the sole heirs of Bibi Fatima, who was respondent No. 1 in the Second Appeal No. 142 of 1987 (R).

2. The Second Appeal No. 142 of 1986 (R) was disposed of on 8.3.1994 while this Civil Review application has been filed on 16.5.1994, which is totally barred by Limitation as per Order 47 Rules 1 and 2 of the C.P.C. For condonation of delay, a petition u/s 5 of the Limitation Act has also been filed. The Civil Review application alongwith its Limitation matter has come up for admission and a lengthy argument was placed by Mr. P.K. Bhowmik, appearing for the petitioner.

3. Mr P.K. Prasad, appearing for and on behalf of the Opposite parties has refuted all the allegations brought in the Civil Review application and his first contention is that the civil Review application is not maintainable in its present form because the petitioner was neither a party in the Second Appeal or in suits or lower court appeals. His further contention is that the respondent No. 1, Fatima Bibi was represented by her lawyer Mr. P.C. Roy, during the course of hearing of the appeal, which will be revealed from the impugned judgment itself and as such there is no scope of reviewing the impugned judgment on the grounds as set forth by Mr. Bhowmik and the grounds for condonation of delay are not at all

convincing.

4. It is the case of the petitioner that after taking the certified copy of the Second Appeal, he went to Delhi for filing SLP before the Supreme Court, but the lawyer whom he engaged advised him to file a Review petition before the High Court instead of filing SLP and as such he came down to Ranchi and filed this Review application in consultation with the lawyer here.

For the purpose of condonation of limitation, day to day explanation is necessary but here no such explanation is found and I am not convinced with the grounds taken by the petitioner for the purpose of condonation of delay.

5. Now, coming to the merits of the case, first contention of the petitioner is that he is the sole heir of Fatima Bibi, who was respondent No. 1 in S.A No. 142/86(R), but the Second Appeal had already abated before it came up for hearing as Bibi Fatima died on 6.6.1990 leaving behind the petitioner as her sole heir. According to Mr. Bhowmik, the appeal is non-best when the same had been abated totally against all respondents not to speak of Fatima Bibi alone as the heirs of Fatima Bibi had not been substituted within the time frame and no petition was ever filed under Order 22 C.P.C. for the substitution of the heirs of Fatima Bibi. When Fatima Bibi is said to be dead then I feel that her heirs may be competent to file a review petition but the grounds taken for the purpose of Review regarding nullity of the judgment cannot be conceived within the scope of review application.

6. Bibi Fatima was represented by a competent civil lawyer, Mr. P.C. Roy and from the impugned judgment, it appears that Mr. Roy argued the case for and on behalf of the respondents including Bibi Fatima. It was never brought to the notice of the Court that Bibi Fatima was dead. In such circumstances, it cannot be stated that the judgment suffered from any error of law, when the same was never brought to the notice of the learned Judge of this Court then there was no scope for reviewing the judgment on that ground alone. If the judgment was delivered in absence of the Bibi Fatima then his heirs may not consider the judgment to be binding on them and it is open to them for agitating the same before the appropriate forum. But this ground of dying of Bibi Fatima on 6.6.1990 was never brought on record and as such when it has been brought for the first time in this review application, there is no scope for reviewing the judgment of the Second Appeal as mentioned above.

7. The next point raised by Mr. Bhowmik that in para-11 of the judgment, the learned Single Judge accepted the contention of Mr. P.C. Roy, appearing for the respondents, Bibi Fatima to the effect that the findings of the Ist appellate court suffered from confusion and as such the Second Appeal was fit to be remanded back to the Ist Appellate Court.

8. On perusal and scrutiny of that para of the impugned judgment, I am constrained to remark that argument placed by Mr. Bhowmik is misconceived. It is true that there was such submission by Mr. P.C. Roy, advocate appearing for

and on behalf of the respondents and nowhere in the subsequent paras, this Court had ever held the submission of Mr. P.C. Roy to be correct. Only recording of submission of Advocate, in the judgment does not go to show that the same submissions have been accepted by the Court.

9. Next submission of Mr. Bhowmik is that the learned Single Judge had made out a third case giving go by to the cases of the plaintiffs and defendants, but I do not find any force in the submission. The impugned judgment does not reveal so. However, if that be the fact, the petitioner has got every right to agitate the matter in higher Court, but such submission does not come within the purview of Review as contemplated under Order 47 Rules 1 and 2 C.P.C.

All the submissions made by Mr. Bhowmik is extraneous and foreign to the limited scope of review as contemplated under the said provisions of C.P.C. and thus on merit also, this review petition has got no force.

10. The Review application is dismissed in limine both on merits as also barred by limitation.