

(2014) 05 RAJ CK 0195

In the Rajasthan High Court

Case No : Civil Restoration Application No. 88/2014 in Civil Regular First Appeal No. 108/1981

Prabhu Ram

APPELLANT

Vs

Jeevan Ram

RESPONDENT

Date of Decision : 28-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 4, Order 22 Rule 9, 151
Limitation Act, 1963 — Section 5

Citation : (2014) 05 RAJ CK 0195

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Kishan Bansal, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—Four applications have been filed by the applicant under (i)- Order XXII, Rule 3 CPC for being impleaded as legal representatives of appellant-Prabhu Ram, (ii)- Order XXII, Rule 4 CPC read with Section 151 CPC for taking legal representatives of sole respondent on record, (iii)- Order XXII, Rule 9 CPC seeking setting aside of abatement on account of death of sole respondent Jeevan Ram and (iv)- application u/s 5 of the Limitation Act for condonation of delay in filing application under Order XXII, Rule 9 CPC.

2. The litigation has a checkered history. The appeal was filed in the year 1981 aggrieved against the judgment and decree dated 29.12.1981 passed by the Additional District Judge No. 2, Hanumangarh, whereby the suit filed by the respondent for specific performance of contract was decreed by the trial court. During the pendency of the appeal, on 13.2.1997, learned counsel for the respondent informed that the sole respondent-Jeevan Ram had expired. Whereafter an application was filed on behalf of the appellant for bringing on record the legal representatives, however, the application was not supported by

affidavit and as such, the appeal came to be dismissed as abated by order dated 10.12.1997. Whereafter restoration application No. 114/2011 alongwith application seeking condonation of delay was filed by the appellant-Prabhu Ram on 19.8.2010 seeking restoration of the appeal. In the application it was indicated that the appellant/applicant became ascetic (Sadhu) and therefore, he had no knowledge or information regarding the death of respondent-Jeevan Ram.

3. Based on the averments made in the application regarding the appellant entering the religious order, it was concluded by order dated 18.4.2014 that entering into the religious order tantamount to civil death and application at his instance was not maintainable and consequently the same was dismissed.

4. Subsequent to the dismissal of the application the present applications have been filed by the applicants under Order XXII, Rule 3; Order XXII, Rule 4; Order XXII, Rule 9 and Section 5 of the Limitation Act with the averments that they were not aware of the death of respondent-Jeeva Ram, the fact about pendency of the appeal before this Court and it is only on dismissal of the restoration application by this Court on 18.4.2014, the applicants became aware of the pendency of the appeal and the fact that they were required to get impleaded as party appellants, implead legal representatives of respondent and seek setting aside of abatement. An application u/s 5 of the Limitation Act with similar averments has been filed seeking condonation of delay in filing all the three applications.

5. A bare look at the above history of the litigation reveals that the present restoration application has been made almost after a passage of 161/2 years from the date when the appeal was dismissed as abated by this Court. The dismissal of the appeal and the passage of over 161/2 years have resulted into several rights and liabilities arising in favour of the parties and/or the legal representatives.

6. The plea raised in the application regarding condonation of delay in filing the applications is baseless. The averments made in the application are that it is only on account of the order dated 18.4.2014 passed by this Court, in the restoration application, that the cause arose to the applicants as the appellant-Prabhu Ram had already filed the application, which was dismissed as not maintainable.

7. The averments and submissions made from have apparently no basis as by order dated 18.4.2014 this Court only noticed the legal implication of the averments made in the application and if the averments made in the application supported by affidavit by the appellant-Prabhu Ram were true, then cause for the applicants to get impleaded as appellants arose as soon as their father entered the religious order and not on account of dismissal of the application by this Court on 18.4.2014. The explanation sought to be given for the delay of 161/2 years cannot be said to be a sufficient reason.

8. Consequently, the application under Order XXII, Rule 3; Order XXII, Rule 4, Order XXII, Rule 9 and Section 5 of the Limitation Act are dismissed. The

restoration application is also dismissed.