

(1978) 01 DEL CK 0020

In the Delhi High Court

Case No : C.A. No's. 329 and 748 of 1976

Prestige Finance P. Ltd. (In Liquidation)

APPELLANT

Vs

Balwant Singh and Another

RESPONDENT

Date of Decision : 25-01-1978

Acts Referred:

Citation : (1978) 48 CompCas 459

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : Rajiv Behl, for the Appellant; P.R. Monga, for the legal representatives of respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Kapur, J.—This is an application under Order 22, Rule 4, read with Section 151 of the Code of Civil Procedure, which has been moved in the course of a proceeding under the Companies Act, 1956, instituted u/s 446 and other Sections against Shri Balwant Singh and others. The facts of the case are that Shri Krishan Lal, one of the respondents named in the petition u/s 446, was found to be dead when the summons issued by this court was sought to be served on him. On this, the official liquidator moved the present application for impleading his legal representatives. In response to this application, the legal representatives have submitted that the petition is not maintainable because it was filed against a dead person and Shri Krishan Lal had died on 19th March, 1968, which was before the main application was moved. It is necessary to distinguish the preliminary objection from the objection on merits, because in the first instance it is submitted that the original petition has been filed against a dead person and, Therefore, this application cannot be filed, and on the second point, it is submitted that Shri Krishan Lal died long ago, and, Therefore, the application should be dismissed. In sum and substance the pleading of the legal representatives is somewhat misleading, but its legal effect is quite obvious. If the application was originally filed against a dead person, then it is not the case

of impleading the legal representatives because, originally, the respondent was not alive. It was, Therefore, a case of the original petition having been filed against the wrong person.

2. For the sake of clarification, it is necessary to state the legal position in somewhat concise terms because these situations are apt to re-occur and then cause difficulty. The situation as is clearly apparent from the statement of law contained in *Roop Chand v. Sardar Khan* AIR 1928 Lah 359, a Division Bench judgment, is that if a suit is filed against a dead person, then it is a nullity and you cannot join any legal representatives ; you cannot even join any other party, because it is just as if no suit had been filed. On the other hand, if a suit has been filed against a number of persons, one of whom happens to be dead when the proceedings were instituted, then the proceedings are not null and void, but the court has to strike out the name of the party who has been wrongly joined. Such a person would be deemed to be wrongly joined, because he was dead on the date of the institution of the suit and, Therefore, incapable of being joined. This is the situation in the present case also. One of the persons is claimed to have died several years before the institution of the suit. As the death certificate was shown to me, I have no reason to doubt the correctness of the statement. I would hold that the said respondent Krishan Lal, was dead even when the case was instituted. This is, Therefore, not a case which can be treated as null and void, but is a case in which one of the parties was dead whose name has naturally to be struck out.

3. The further question that arises in these cases is that after striking out the name of the deceased person from the array of parties, are the legal representatives to be joined under Order 22, Rule 4 or under Order 1, Rule 10 or under Order 6, Rule 17, of the Code of Civil Procedure. Obviously, if the original party was wrongly joined and has to be struck out under Order 1, Rule 10, it is not a case to which Order 22 applies. It is apparent from the terminology of the various provisions contained in Order 22 of the Code that it applies to cases where succession or transfer takes place during the pendency of a suit. If a person, whether he be plaintiff or defendant, dies during the pendency of a suit or, if an interest in property is transferred during the pendency of the suit concerning that property, then the legal representatives or transferees, etc., of the original person have to be joined. This may be considered to be a provision dealing with transfers *lis pendente*. If the transfer, whether by law or by contract, has taken place before the proceedings were instituted, then it is not a case to which Order 22 applies. Hence, properly speaking, this application under Order 22 is not maintainable.

4. The next question is whether a party can be joined under Order 1, Rule 10 or under Order 6, Rule 17 of the Code. Obviously, if the case has been instituted against a dead person and that person happens to be the only person, then the proceedings are nullity and even Order 1, Rule 10 or Order 6, Rule 17 cannot be availed of to bring about an amendment. This is the law stated in *Municipal*

Council Vs. Thazhel Puthan Purayil Kunhipathumma and Another, , which is a case dealing with the death of a sole defendant. Similarly, if one of the defendants is found to be dead, then the situation is dealt with in Firm Pala Mal-Narain Mal v. Fauja Singh AIR 1926 Lah 153, wherein it was held that the name of that defendant is to be struck out and the case is to be proceeded with. But, suppose the person who has died is a necessary party, then his legal representatives have to be imp leaded somehow or other. That situation is discussed in Roop Chand v. Sardar Khan AIR 1928 Lah 359, wherein it is held that either an amendment of the plaint has to be made or the suit has to be dismissed. A case dealing with the joining of a party under Order 1, rule 10, where one of the defendants was already dead, is Sringeri Mutt Sri Jagathguru Chandra Sekhara Bharathi Swamigal v. Komarasami Goundan AIR 1917 Mad 849. This judgment in fact shows that even though an application under Order 22, Rule 4 was rejected, another application can be moved under Order 1, Rule 10, to join the transferees or legal representatives in their personal capacity. To clarify, the legal representatives in this case have to be joined not as legal representatives, but in their own right, whether or not they have succeeded to the claim mentioned in the main case will have to be decided on the merits. The present application cannot be allowed, but orders will be passed under Order 1, Rule 10 of the Code in the main case. This application is accordingly dismissed. Parties to bear their own costs.