

(1998) 05 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : OMP (M) No's. 14 and 15 of 1995 and OMP No. 353 of 1995 in Civil Suit No. 100 of 1986

Punjab National Bank

APPELLANT

Vs

Hilton Plators and Others

RESPONDENT

Date of Decision : 04-05-1998

Acts Referred:

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

Citation : (1998) 2 ShimLC 241

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

Bench : Single Bench

Advocate : Ravi Bakshi, for the Appellant; Arun Madan and Y. Paul, for Defendants No. 1 to 5 except Defendant No. 4, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Palli, J.—This order shall dispose of these three applications. OMP (M) No. 14 of 95 has been filed under Order 22, Rule 4 of the CPC with the prayer to bring on record the legal representatives of the deceased-Defendant No. 4. OMP No. 353 has been filed u/s 5 of the Limitation Act seeking condonation of delay in filing the above said application. OMP (M) No. 15 of 95 has been filed under Order 22, Rule 9 of the CPC for setting aside the abatement. Admittedly, a suit filed by the Plaintiff-Bank is pending in this Court for the recovery of the amount against the Defendants.

2. Sh. A.K.S. Bedi has been impleaded as Defendant No. 4 and is said to be the guarantor in respect of the loan. In the application to bring on record the legal representatives, it has been said that in the month of September, 1994 learned Counsel for the Plaintiff was informed about the death of Defendant No. 4 and it is thereafter learned Counsel has been writing repeatedly to the Branch Manager of the Bank. Reference has been made to letters dated 17th October, 1994, 1st December, 1994, 16th February, 1995 and 9th May, 1995.

3. Surprisingly, the application does not contain the date of death of Defendant No. 4. The date of death as given in the reply is 5th April, 1994. The application has been moved on 18th June, 1995.

In the application seeking condonation of delay, the averments made in the application under Order 22, Rule 4, Code of Civil Procedure, stand repeated. The letters have been annexed as Annexures P-1 to P-4. Surprisingly in para 5, reference is also made to a telegram sent by the learned Counsel for the Plaintiff dated 18th May, 1995.

4. These applications are being hotly contested by the other side. According to the learned Counsel appearing for the Defendants, no case has been made out for condonation of delay and for setting aside the abatement.

5. After having heard the learned Counsel for the parties at length and after careful perusal of the applications as well as replies, I find that all these applications are liable to be dismissed.

6. It is a sad state of affairs to note that despite the fact that the learned Counsel for the Defendants had brought the factum of the death of Defendant No. 4 to the notice of the learned Counsel for the Plaintiff, yet the Bank authorities did not raise even a little finger to realise the importance of the letters sent by the learned Counsel in this respect.

7. Again nothing has been said in the applications as to when the machinery of the Plaintiff-Bank came into action in order to find out the date of death and further particulars in respect of the legal representatives. In one of the applications, as said above, there is no mention of the telegram. No where in the applications it has been said as to when the person concerned was deputed to find out the date of death and other particulars of the legal representatives. A vague assertion has been made in paragraph 5 of the application.

It has further not been said as to when the inquiry was made and from where.

It is quite painful to see as to how these applications have been drafted without looking into the seriousness of the situation. The Plaintiff-Bank has to blame itself for their gross negligence, lethargy and inaction as is projected from the letter Annexures P-1 to P-4.

8. It has also been said in paragraph 3 of the reply to the application for seeking condonation of delay that the matter was brought to the notice of the learned Counsel for the Plaintiff in the month of April, 1994 itself, whereas in the application filed by the Plaintiff they have given the month of September, 1994 when information in respect of the death is said to have been received.

9. In my considered view the delay in filing the application has not been satisfactorily explained and no case is made out for condonation of delay. In this view of the matter, application bearing OMP(M) No. 15 of 95 with the prayer for setting aside the abatement has also to be dismissed, as no sufficient cause has

been made out.

In the given situation, all the three applications are hereby dismissed.