
(2004) 12 DEL CK 0075
In the Delhi High Court
Case No : FAOOS 38 of 2002

R.K. Churiwala and Others

APPELLANT

Vs

Kunj Behari and Another

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Arbitration Act, 1940 — Section 20
Civil Procedure Code, 1908 (CPC) — Section 151
Limitation Act, 1963 — Section 5

Citation : (2004) 3 ARBLR 522 : (2005) 116 DLT 163 : (2005) 80 DRJ 398

Hon'ble Judges : V.K. Jain, J;Anil Kumar, J

Bench : Division Bench

Advocate : D.D.Verma and S.P.Singh Sisodia, for the Appellant; Kunal Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.

1.This appeal is against the order dated 19th October,2001of the Learned Single judge allowing applications for condensation of delay and substitution of legal representatives of deceased Karta of an HUF and another defendant, who was also a coparcener and where other defendants were the HUF and other coparceners, one of them being also the son of deceased karta.

2.The respondents had filed a petition u/s 20 of the Arbitration Act,1940 against M/S K.D.Churiwala and sons HUF through its Karta M.P.Churiwala who was defendant no.6 in the petition. Besides the said two defendants, the other members and coparceners of said HUF, Shri K.P.Churiwala, Mr.R.K.Churiwala, Mr. Sanjay Churiwala and Mr. Nikhil Churiwala were also imp leaded as defendants in the petition. Shri Sanjay Churiwala is the son of Shri M.P.Churiwala, deceased karta.

3.The addresses of all the defendants in the petition u/s 20 of the Arbitration

Act,1940 were given as 32-J, New Road, Alipore, Calcutta. During the pendency of the petition, on 7th September,1995 the counsel for the defendants/appellants intimated that Shri M.P.Churiwala defendant no.6 in the petition, karta of HUF M/ S K.D.Churiwala, and defendant no.2 Shri K.P.Churiwala have died. The counsel for the defendants, however, did not disclose the dates of their death. There after petition was listed before the Court on 19th October,1995; 9th February,1996; 18th March,1996 and 21st May, 1996 and the applications for substitution of legal representative of above stated deceased defendants was filed 21st May,1996 along with an application for condition of delay u/s 5 of the Limitation Act, 1963 read with Section 151 of Code of Civil Procedure. The said applications were contested by the respondents but were allowed by order dated 19th October,2001 by the learned Single Judge and delay in filing the application for substitution of legal representatives of the deceased defendants was condoned and the legal representatives of the deceased defendants were substituted subject to payment of costs of Rs.2000 by the respondents.

4.The learned Single Judge held that even the defendants counsel was not aware of exact date of death of the defendant no.6 and defendant no.2 and he had merely informed that the said defendants had died. He held that the respondents/ plaintiffs were not aware of the death of said defendants nor the plaintiffs were aware of the legal representatives of the deceased defendants. He held that once it was established that there was difficulty in ascertaining the names of the legal representatives, it was obvious that it must be taken that there was sufficient ground for condensation of delay in ascertaining the same. The Learned single Judge relied on Satnam Singh and Another Vs. Mohinder Singh and Others, . where it was held that when one of the respondents had died during the pendency of the appeal and this fact was not even known to the counsel there was sufficient ground for condensation of delay and for substitution of legal representatives. Reliance was also placed by the learned Single Judge on Kartar Chand etc. Vs. Jowala Singh, and Union of India (UOI) Vs. Ram Charan and Others, .

5.The appellants, R.K.Churiwala, Sanjay Churiwala and Nikhil Churiwala have impugned the order of the Learned Single Judge on the grounds that on 7th September,1995, it was intimated that the said defendants had died and thereafter on various dates the counsel for the respondents who appeared before the Joint Registrar did not intimate the steps taken by the respondents to ascertain about the legal representatives of deceased defendants. According to appellants the `various efforts" alleged to have been made by the respondents were blatant lies and no particulars of various efforts alleged to have been made by the respondents were disclosed. The appellants have contended that Shri M.P.Churiwala had his business in Bhagirath place, Chandni Chowk and the respondent no.1 was a close friend of the deceased defendant no.6. They contend that the respondent no.1 ought to have ascertained the details of the legal representatives of the deceased from the common closed friends. They also relied on Union of India (UOI) Vs. Ram Charan and Others, where it was held

that there is no question of considering the expression sufficient cause liberally either because the party is government or the question arises in connection with impleading the legal representatives of the respondent. The appellants relied on the said judgment where it was held:-

""The mere allegations about his not coming to know to of the death of the opposite party is not sufficient. He had to state reasons which, according to him, led to his not knowing of the death of the defendant within reasonable time and to establish those reasons to the satisfaction of the court, especially when the correctness of those reasons is challenged by the legal representatives of the deceased who have secured valuable rights of the abatement of the suit.""

6. The appellants also relied on Kartar Chand etc. Vs. Jowala Singh, to contend that the application of the respondents u/s 5 of the Limitation Act could not be allowed. The appellants, however, have not imp leded the widows of Late Shri M.P.Churiwala deceased defendant no. 6 and deceased defendant no.2 Shri K.P.Churiwala who were allowed to be substituted by the Learned Single Judge in the present appeal.

7. On perusal of the record of the petition u/s 20 of the Arbitration Act,1940 it transpires that the defendant no.1 through its karta defendant no.6 entered into agreements for construction and development of property no.W-122 Greater Kailash - II, New Delhi. Disputes arose between the parties and consequently the petition u/s 20 of the Arbitration Act,1940 was filed against defendant no.1 M/S K.D Churiwala (HUF) through its Karta defendant no.6 and other coparceners. On death of karta Shri M.P.Churiwala whose son Shri Sanjay Churiwala who was already on record, the petition filed against the HUF firm will not abate as there was representation of his estate. Even on the death of another coparcener Shri K.P.Churiwala, whether the petition u/s 20 of the Arbitration Act, 1940 will abate and whether the application for condensation of delay and substitution should or should not have been allowed, is to be considered.

8. A division bench of this Court had held in Savitri Devi v. R.S.Bindra and Ors., 2nd (1973) I DELhi 938 that on the death of one of the defendants, on his widow being already on record as one of the defendant, the suit will not abate if the application for bringing other legal representatives had not been filed within time. The Division Bench had relied on Mahabir Prasad Vs. Jage Ram and Others, . where it was observed:-

""Where in a proceeding a party dies and one of the legal representatives if already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in this behalf that he is also on the record, as an heir and legal representative. Even if there are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the Limitation Act the proceedings will not abate.""

9. The inevitable logical inference, thus, is that on the death of Shri

M.P.Churiwala, karta of M/S K.D.Churiwala (HUF), the petition u/s 20 of the Arbitration Act, 1940 will not abate as his son who was also a coparcener, was a party to the petition as defendant no.4.

10. In view of this reliance can not be placed by the appellants on the ratio of Ram Charan (supra) where it was held that mere allegations about not coming to know to of the death of the opposite party is not sufficient as the party seeking substitution after abatement must establish sufficient reasons to the satisfaction of the court as valuable rights of the abatement accrue to the opposite party of the suit and to legal representative. In the case of the appellants, it can not be said that the petition against an HUF abated on the death of karta of HUF whose son and another coparcener was a party to the petition. Ratio of the said case is Therefore, not of much help to the Appellants. Rather in another matter Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, , it was observed by the Supreme Court that by taking a pedantic and hyper-technical view of the matter, the Explanation furnished by a party for taking time in substituting the legal representatives should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit and liberal interpretation should be given to expression ""sufficient cause"". The Supreme Court held at page 201 as under:-

""12. Thus it becomes plain that the expression ""sufficient cause"" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether Explanation furnished would constitute ""sufficient cause"" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting Explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of Explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic an hyper-technical view of the matter the Explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.""

11. It has also been held by the Supreme Court in Nagina Singh and Others Vs. Naga Singh and Others, that having regard to the fact that all the contesting parties were on record and considering all the facts and in the interest of justice, delay in filing the application for substitution could have been compensated by award of cost and the adjudication ought to have been on merits.

12. In Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, the Supreme Court had held that High Court had fallen in error in interfering with the finding of fact arrived at by the subordinate judge with respect of party having sufficient cause for not making an application for bringing the legal representative of deceased party on record within time and for not applying for setting aside of abatement within time.

13. The learned Single Judge had held that the respondents did not know about the death of the defendant no.6 who was the karta of M/S K.D.Churiwala (HUF) and another coparcener defendant no.2. The intimation about their death was given by the counsel for the defendants in the petition on 7th September,1995, however, even he did not give the dates of their death. The addresses of the deceased defendants are of Calcutta. Despite the allegations of the appellants that the defendant no.6, karta of HUF had died in Delhi, the Learned Single Judge accepted the Explanation given by the respondents that there was difficulty in knowing the particulars and names of the legal representatives and construed it as sufficient grounds for condensation of delay and to compensate them awarded an amount of Rs.2000 as cost against the respondents/plaintiffs.

14. We in appeal also are of the view that the respondents had sufficient grounds for not filing the applications for substitution of legal representative of deceased defendant no.2 and defendant no.6 and in seeking condensation of delay. Though the appellants in their reply to the applications had contended that defendant no.6 was carrying on business at Delhi, however, in the present appeal, the appellants, who are the other coparcener of M/S K.D.Churiwala (HUF) have given their addresses of Calcutta. he appellants had contended that the some close relations of respondent no.1 and some common friends had come to condole the death of Late Shri M.P.Churiwala, however, no particulars of such friends and close relatives were given. Even in the reply to the applications of the respondents, the appellants had not disclosed the addresses and details of legal representatives of deceased defendants no.6 and 2 who were karta and a coparcener of M/S K.D.Churiwala and son (HUF). The allegation made by the appellant that respondent no.1 was very close to the deceased Shri M.P.Churiwala for several years, is also without any details or particulars. In the circumstances, it can not be said that lack of knowledge about the dates of death of deceased defendants no. 6 2 and particulars of legal representatives and time taken to ascertain the same will not constitute sufficient cause. The respondents in their application had prayed that the widows of the deceased defendant no. 2 and 6 and their sons be imp leaded as part. The appellants contended that the respondents knew about the deaths of the defendant nos.2 and 6 but their pleas

are not specific and also lacks in material particulars. The Supreme Court in the case of Ram Nath Sao (supra) had held that the expression sufficient cause"" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or want of bona fides is imputable to a party. In the facts and circumstances, it can not be stated that the respondents were negligent or were lacking in bona fide. The counsel for the appellant though intimated about the deaths of the two defendants but the dates of deaths were not given or the particulars of legal representatives were given. Even in the reply to the applications for substitutions the details of the legal representatives were not given. In order to meet the ends of justice cost has been imposed on the respondents and in favor of the appellants by the Learned Single Judge.

15. In the entire gamut of facts and circumstances it will not be appropriate to take a pedantic and hyper-technical view of the matter and the Explanations furnished by the respondents and to disbelieve the same, which has been believed and approved by the Learned Single Judge. The Explanations and reasons given by the respondents can not be rejected in the facts and circumstances on the points of facts and law involved in the case. A pedantic and narrow technical construction may cause enormous loss and irreparable injury to the respondents whose lis against the HUF with whom they had entered in to agreements and in respect of which disputes have arisen, will terminate if the legal representatives are not allowed to be substituted and the petition u/s 20 of the Arbitration Act, 1940 is not decided on merits. It is more so because the learned Single Judge has found their Explanation to be just and plausible and had condoned the delay and substituted the legal representatives and also compensated the appellants.

16. The learned Single Judge has allowed the application for substitution and for condensation of delay by awarding a cost of Rs.2000.00 on the respondents. In Nagina Singh (supra) it was held that having regard to all the facts and in the interest of justice, delay in filing the application for substitution could have been compensated by award of cost and the adjudication ought to have been on merits.

17. Reasoning of the Learned Single judge can not be faulted on the grounds as raised by the appellants nor it will be appropriate to interfere with the finding of facts arrived at by the Learned Single Judge and interfere with his decision to allow the application for condensation of delay and substitution of legal representative subject to cost of Rs.2000 awarded against the respondents in the facts and circumstances of the case.

18. For the foregoing reasons, Therefore, we find no merit in the appeal and the same is dismissed. However, in the facts and circumstances we leave the parties to bear their own costs.