

(2012) 03 RAJ CK 0077

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3283 of 2009

RSRTC and Another

APPELLANT

Vs

Banshi Dhar Raigar

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, Order 22 Rule 9, Order 22 Rule 9(2), Order 43 Rule 1, 100
Limitation Act, 1963 — Section 5

Citation : (2012) 03 RAJ CK 0077

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bela M. Trivedi J.

1.The present appeal has been filed by the appellants-original defendants under Order 43 Rule 1(k) of CPC challenging the order dated 6.10.2005 passed by the learned Addl. District Judge, No.7, Jaipur City, Jaipur (hereinafter referred to as "appellate court")in Regular Civil Appeal No.70 of 2002, whereby the appellate court has dismissed the applications of the appellants for bringing legal representatives of the original respondent-plaintiff on record and also for condonation of delay filed u/s 5 of the Limitation Act, and also dismissed the said Appeal. The short facts giving rise to the present CMA 3283 of 2009 appeal are that the original plaintiff Banshi Dhar Raigar, who was the employee of the appellants-defendants had challenged his termination order dated 8.1.1987 passed by the appellants, before the trial court by filing the suit. The trial court by the judgment and decree dated 13.9.1989 decreed the said suit in favour of the said plaintiff. Accordingly, the said plaintiff Banshi Dhar Raigar was reinstated in the service by the appellants. However, the appellants preferred an appeal before the appellate court challenging the said decree passed by the trial court. During the pendency of the said appeal, the said plaintiff Banshi Dhar Raigar

expired on 16.5.1993. Subsequently, the appellants submitted the application on 29.5.1999 for bringing the heirs of the said plaintiff Banshi Dhar Raigar on record of the appeal and also made an application seeking condonation of delay which had occurred in filing the said application. The appellate court dismissed both the applications and consequently also the appeal by the impugned order dated 6.10.2005. Being aggrieved of the said order, the present appeal has been filed under Order 43 Rule 1 (k) of CPC.

2. At the outset, a preliminary objection was raised by the learned counsel Mr. Babu Lal Gupta for the respondents to the effect that the present appeal under Order 43 Rule 1 (k) of CPC is not maintainable, the impugned order being not an order under Rule 9 of Order 22 of CPC. However, the learned counsel Mr. RD Rastogi for the appellants has rightly placed reliance on the decision of the Supreme Court in the case of Madan Naik (Dead) by Legal Representatives and Others Vs. Hansubala Devi and Others, , in which it has been held inter alia as under:

An order under Order 22 Rule 9(2) C.P.C. refusing to set aside abatement is specifically appealable under Order 43 Rule 1 (k). Such an adjudication if it can be so styled would not be a decree as defined in Section 2(2) C.P.C. Section 100 provides for second appeal to the High Court from every decree passed in appeal by any Court subordinate to the High Court on the grounds therein set out. What is worthy of notice is that a second appeal lies against a decree passed in appeal. An order under Order 22 Rule 9 appealable as an order would not be a decree and therefore, no second appeal would lie against that order. Such an appeal is liable to be rejected as incompetent.

3. In view of the above and in view of the CMA 3283 of 2009 conjoint reading of Rule 9 and Rule 11 of Order 22 of CPC, the contention raised by learned counsel for the respondent Mr. Babu Lal Gupta that the present appeal is not maintainable is not accepted.

4. So far as the merits of the case are concerned, it has been submitted by learned counsel Mr. RD Rastogi for the appellants that the delay in filing the application for bringing on record the legal heirs of original respondent-plaintiff Banshi Dhar Raigar was on account of administrative reasons and the same deserved to be condoned in the interest of justice. Mr. Rastogi has placed reliance on the decisions of the Hon'ble Supreme Court to substantiate his contention that substantial justice is required to be done between the parties and the courts should not be hyper technical in the matter of condonation of delay. However, the learned counsel for the respondent also relying upon the other set of decisions of Hon'ble Supreme Court, submitted that the appellants had failed to explain the reasons for not making application within the prescribed time limit. According to him, the deceased respondent was already reinstated in service of the appellants after the decree passed by the trial court and the appellants were aware of his death. According to him, the appellate court having rightly considered the facts and circumstances of the case and dismissed the

applications of the appellants, this court should not interfere with the impugned order.

5. Having regard to the submissions made by learned counsel for the parties and to the impugned order passed by the appellate court, it transpires that though the respondent Banshi Dhar Raigar had expired on 16.5.1993, the appellants had submitted the application for bringing his heirs on record and for condonation of delay on 29.5.1999 i.e. after the period of about 6 years of his death. It was sought to be submitted that the appellants came to know about his death when the acknowledgment receipt of the registered letter sent to the deceased had come back with the remark of his death on 13.8.1997. The said contention of the appellants is not accepted for the simple reason that the deceased was in service of the appellants only and it is not possible that appellants would not be aware of his death. It is also pertinent to note that there is no explanation much less satisfactory explanation given by the appellants as to why the said applications were not preferred for two years of their coming to know about his death in 1997. There cannot be any disagreement with the proposition of law laid down by the Apex court as regards the interpretation of the expression "sufficient cause" as contemplated in section 5 of the Limitation Act, however, in regard very pertinent observations made by the Apex Court in the case of Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, are required to be reproduced which are as under:

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 and 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.

6. In the instant case, the appellants have failed to point out as to how the appellants would suffer enormous loss or irreparable injury if the delay was not condoned. As a matter of fact, the original-respondent Banshi Dhar Raigar has already expired as back as in the year 1993 and no useful purpose would be served by continuing the appeal before the appellate court against the respondents who are the heirs after such a long time. In that view of the matter, the appellate court having rightly dismissed the applications and the appeal of the appellants, this court is not inclined to interfere with the impugned order passed by the appellate court. The appeal being devoid of merit deserves to be

dismissed and is accordingly dismissed.