
(1986) 09 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 254 of 1978

Satpal

APPELLANT

Vs

Santokh Kumar and others

RESPONDENT

Date of Decision : 25-09-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4

Citation : (1986) 09 P&H CK 0055

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Advocate : Y.P. Gandhi, for the Appellant; H.L. Sarin , Miss Jaishri Thakur and Miss Ritu Bahri, for the Respondent

Final Decision : Allowed

Judgement

Gokal Chand Mital, J.—One of the Defendants-Respondents died when the matter was pending in appeal before the lower appellate Court, on 25th March, 1975. Her legal representatives were not brought on record within limitation. On 16th August, 1977 an application under order 22 Rule 4 C. P. C. was filed to bring on record the legal representatives-of the deceased-Respondent. The lower appellate Court considered the application and the reply and came to the conclusion that sufficient cause for condonation of delay in filing the application beyond limitation was not shown. As a result, the application was dismissed. Since the claim against the Respondents was joint, the lower appellate Court held that the appeal had abated in toto by order dated 2-11-1977. This is Plaintiffs second appeal.

2. After hearing the learned Counsel for the parties and on perusal of the record, I am of the view that the lower appellate Court erred in dismissing the appeal as having abated. One of the Respondents died on 25th March, 1975. This Court made amendment dated 17th March, 1975 in order 22 Rule 4 of the CPC "for short" the Code"), and after approval of the State Governments of Punjab, Haryana and Chandigarh Administration, was published on 11th April, 1975,

according to which it was no longer necessary to file an application to bring legal representatives of a deceased-Defendant or Respondent on record. By 11th April, 1975, about two weeks had passed since the death of one of the Respondents whereas the limitation for filing of an application under the Limitation Act is 90 days. That means, about 75 days more time was there with the Appellants even after the publication of the amendment made by this Court in Order 22 Rule 4 of the Code, and in view of the amendment, it became wholly unnecessary for the Appellants to file any application to bring on record the legal representatives of the deceased-Respondent. In this view of the matter, even if the application filed by the Appellants on 16th August, 1977 is ignored, there would be no abatement of the appeal. This aspect of the matter was completely lost sight of by the lower appellate Court because it appears that neither the Judge nor the counsel for the parties were aware of the amendment made by this Court. Even otherwise, I find that sufficient cause for bringing on record the legal representatives of the deceased was made out but in view of the aforesaid finding, this matter need not be dealt with in any greater detail.

3. For the reasons recorded above, this appeal is allowed, the order of the lower appellate Court is hereby set aside and the matter is remitted to that Court for decision of appeal on merits. The parties through their counsel are directed to appear before the lower appellate Court on 30th October, 1986. There will be no order as to costs.