
(2003) 02 DEL CK 0021

In the Delhi High Court

Case No : Suit No. 2664/98 and IAs 8572 and 11439-40/02

Shri Hari Chand and Others

APPELLANT

Vs

PSP Builders and Promoters

RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Citation : (2003) 2 AD 377 : (2003) 103 DLT 345 : (2003) 67 DRJ 573 : (2003) 2 RCR(Civil) 480

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : R.L. Kohli, for the Appellant; K.R. Gupta and D. Kiran for Defendant No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.

IAs No.8572/02, 11439-40/02

1. These applications have been filed consequent upon the death of Defendant No. 2 on 17/12/2001. On 30/3/2001, this Court had ordered dusty notice to the non-applicants through counsel, returnable on 16/7/2001. An application for amendment, which counsel for the parties state is yet to be disposed of, had been filed by the plaintiff to implead, inter alia, the wife, and now widow of Defendant No. 2. Although steps were taken for serving her, these steps remained futile. In the proceedings held on 8/3/2002, it was recorded that the summons issued to the wife of Defendant No. 2 have been received back unserved with the Report that she was not found/living at the given address and the house was found locked. Hon"ble Mr. Justice J.D. Kapoor had observed that " though there is a presumption of service but as a matter of precaution let their service be effected by affixation and at the conspicuous place of the Court House". The relevance of mentioning these Orders is that the case was listed before the Court on several occasions between December, 2001 and July, 2002,

and yet the Court was not informed of the death, even though the dispute remained active and notices were being sent to the widow of Defendant No. 2 at the address available on the file. Had the matter been dormant, the failure to immediately inform the Court may have been viewed differently.

2. On 9/7/2002, the erstwhile counsel for Defendant No. 2 informed the Court of the demise of Defendant No. 2. On that date, he was directed as follows:

" Let the name of legal heirs be supplied to learned counsel for plaintiffs. Learned counsel for plaintiffs seeks time to move an appropriate application for impleading LR's of Defendant No. 2."

3. is No. 8572/02 was filed on 16/9/2000. It is relevant to record that the application is dated 14/8/2002 and has been filed thereafter quite obviously because the affidavit of Shri Hari Chand in support thereof was sworn only on 16/9/2000. This is also obvious from the over-writing in the affidavit. The prayer in this application is that the Court direct learned counsel for the Defendant to supply the names and addresses of the Legal Representatives(LRs) of the deceased Defendant No. 2 and that the same may be permitted to be brought on record as Defendants. By this time, over two months had already elapsed, out of which one month had been lost solely because of the inactivity of Shri Hari Chand, the plaintiff. By letter dated 18/10/2002, addressed to the learned counsel for the plaintiff by learned counsel for Defendant No. 1, he was informed of the details of the five LR's deceased-Defendant No. 2.

4. Eventually is No. 11439/02 dated 28/11/2002 u/s 151 C.P.C. read with Order XXII Rule 4 CPC and is No. 11440/02 dated 28/11/2002 u/s 5 of the Limitation Act was filed on 4/12/2002.

5. The applications are vehemently opposed by Mr. Gupta, learned counsel for the Defendant. It is his contention that Rule 10A of Order XXII CPC places an obligation on the counsel of the deceased party to merely inform the Court of the death of such party. When Clause 76- sub- clause (v) of the C.P.C. Amendment Act, 1976 is perused, it does not shed any further light on the purpose behind the amendment. All that is stated in the Objects & Reasons is that the new Rule 10 A is being inserted to impose an obligation on the pleaders of the parties to communicate to the Court the death of the party represented by him. Mr. Gupta contends that since his engagement as an Advocate for Defendant No. 2 had come to an end by that death, no further duty or obligation should have been fastened on him. He has further contended that the plaintiff is admittedly and uncontrovertibly dominus IIT is and is, Therefore, solely responsible for the progress of the Suit. He has also contended that no sufficient ground has been shown for condoning the delay u/s 5 of the Limitation Act.

6. Mr. Kohli, learned counsel for the plaintiff, has relied on Rule 4 of Order XXII CPC, in addition to Rule 10A of that Order. What these provisions state is that the plaintiff, if ignorant of the death of the Defendant, fails to file an application for substitution of the LR's, he may do so within the period specified in the Limitation

Act, i.e. 90 days from the date of the death of the party. On the expiry of this period, the Suit automatically abates. In this manner, yet another opportunity is granted under sub-Section(b) for applying, after the abatement of the Suit for setting-aside the abatement u/s 5 of the Limitation Act, but these steps must be taken within sixty days. It is Mr. Kohli's contention that it is now firmly entrenched that the relevant date is not the date of the death but the date on which the opposite party learns of this event. Reliance is being placed on *Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another*, in which it has been observed as follows:-

" 4.It is stated in the written arguments of the counsel for the respondents that the District Judge by order dated May 27, 1995 brought the legal representatives of the first respondent on record. When application came to be filed in the District Court on May 5, 1995 to the knowledge of the counsel for the appellant, it was ordered on May 27, 1995. The application for substitution is barred by limitation. The SLP had abated and, Therefore, appeal is not maintainable. We find no force in the contention. Under Order 22, Rule 10 A, CPC, whenever a pleader appearing for a party to the suit comes to the knowledge of the death of the party, he has to inform about it and the Court thereupon gives notice of such death to the other party and for this purpose, the contact between the pleader and the deceased party is deemed to subsist. It would, Therefore, be clear that though the legal representatives have been brought on record in the executing Court on May 27, 1995 pending proceedings in this Court, since the counsel for the appellant did not have had the information, on coming to know of the death after dusty service was taken out, immediately application under Order 22, Rule 4, CPC came to be filed within thirty days of the date of the knowledge. Accordingly, there is no abatement of the appeal. The State is not expected to keep watch over the survival of the respondent and lapse of counsel to intimate to the counsel to intimate to the counsel appearing in this Court cannot be construed to be knowledge of death. Even if it is assumed that abatement was caused, since application was filed under Order 22, Rule 4, CPC within 30 days from the date of the knowledge there is no delay in making the application to bring the legal representatives on record in this appeal. There is, hence, no abatement by reason of the death of the respondent. The application to bring the legal representatives is accordingly ordered."

It does appear that the Apex Court had considered the date of knowledge to be relevant date. The application under Order XXII Rule 4 had been filed within thirty days of the date of knowledge. Reliance is also being placed by Mr. Kohli on *Bhajranglal Agarwal (D) by LRs vs. Channappa Hatpaki (D) by LRs*, JT 2001(3) SC 334 in which the Supreme Court had held that " Insofar as condensation of delay is concerned, in our view the tenants/appellants have shown sufficient cause to justify the condensation of delay and accordingly we set aside the order of the High Court on that aspect and condone the delay of 95 days". In that case, the party concerned had died on 19/4/1999. The Court observed that the applicant had come to know of the death on 9/12/1999 and had filed an

application on 9/1/2000, by which time the period of 90 days, as well as period of 60 days, had expired. Although the reasons which convinced the Apex Court in arriving at this conclusion for condoning the delay is not easily extractable, it does appear that the coordinate Bench also considered date of knowledge to be relevant event. These decisions, however, do not shed any light on the conundrum of the period in which an application should be filed, even if it is to commence from the date of knowledge.

7. In my view, this period cannot possibly extend beyond 90 days from the date of knowledge. This is initially the period fixed under the law. There is every reason to hold that a even lesser period should be granted, keeping in view the extreme circumstances of the Suit having already abated. Although there is good reason to hold that every day thereafter should be accounted for. As a rule of thumb, thirty days may be viewed as a reasonable period for condoning delay.

8. As has been mentioned above, there is unexplained delay and apparent negligence even in the filing of the first application in which it had been prayed that the counsel for the Defendant be ordered to provide the particulars of the LRs. In normal circumstances, I would favor the stand that the obligation cast on the counsel for the erstwhile counsel for the deceased party does not extend beyond informing the Court of his demise. The duty cast by the Court on the counsel, for providing the details of the LRs was, Therefore, beyond the contemplation of law. Be that as it may, these details were supplied by the erstwhile counsel for Defendant No. 2 on 18/10/2002. Applying the maxim that that no party can be prejudiced by an act of the Court, and keeping in perspective the directions of the Court passed on 9/7/2002, calling upon the counsel for Defendant No. 2 to provide the details of the LRs, knowledge of the death in the circumstances of this case can be extended up to 18/10/2002 and no further.

9. Keeping in mind the fact that the Suit had already abated, I find it difficult to excuse the plaintiff for not taking immediate steps for impleading LRs of deceased Defendant No. 2. In the application for seeking condensation of delay all that is stated is that the plaintiff was awaiting the disclosures to be made by the counsel for Defendant No. 2. Thereafter, in paragraph 5, it is stated that immediately the application u/s 5 of the Limitation Act and Section 151 of the C.P.C. has been filed. No Explanation is forthcoming as to why it took so much time to file the application, viz. 4/12/2002.

10. The purpose of prescribing periods of limitation is to lay down the circumstances in which a particular party may rest or " repose" assured that its liability has come to an end. That is why the Acts of Limitation have quite often been referred to as the " statute of repose " . I find that the conduct of the plaintiff was extremely negligible, even after 18/10/2002 when the counsel for Defendant No. 2 had discharged the burden placed on him by the Court. The duty was not discharged by the filing of the previous application. Assuming, for the purposes of the present Suit that the relevant date was 18/10/2002, I find

no reason for granting latitude beyond one week, and certainly not beyond thirty days. No grounds for condoning the delay have been disclosed or are made out.

11. All three applications stand dismissed.

Suit No. 2664/98

12. Renotify before the Joint Registrar for further orders on 20/2/2003.