
(2008) 03 KAR CK 0053

In the Karnataka High Court

Case No : Regular Second Appeal No. 2363 of 2005

Sri. T. Subba Rao

APPELLANT

Vs

Sri. T. Narasimha Rao

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Limitation Act, 1963 — Section 120, 121

Citation : (2008) ILR (Kar) 2768 : (2009) 3 KarLJ 520 : (2008) 3 KCCR 1535

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : R. Abhinav, for the Appellant;

Judgement

D.V. Shylendra Kumar, J.—Sri. Abhinav, Learned Counsel for the appellant submits that the registry is unnecessarily insisting on the appellant for filing an application for condonation of delay in filing the application for bringing the legal representatives of the deceased respondent on record, that it is not necessary, that the only consequence of not filing an application to bring on record, the legal representatives of the deceased respondent within the permitted time of 90 days, is that the appeal abates. But Limitation Act provides a further 60 days time there from to file an application for setting aside abatement and such an application seeking for setting aside abatement having been filed within a further 60 days from the initial 90 days from the date of death of the respondent, the application for setting aside abatement is in time and when once this application is filed, application for bringing the legal representatives of the deceased respondent should be considered without any further application for condonation of delay and therefore, submits that the two applications - I.A.I/08 and I.A.II/08 may be ordered.

2. I have heard the learned Counsel for the appellant and examined the legal position.

3. Applications -I.A.I/08 and I.A.II/08 are filed for bringing the LRs. of the

deceased respondent on record, who is said to have died on 10.10.2007 and also to set aside the abatement as indicated in the affidavit filed in support of the application for setting aside abatement that due to certain reasons the application could not be filed within 90 days and therefore the appeal stood abated after the expiry of 90 days. In terms of Article 120 of the Schedule to the Limitation Act, 1963, the application for bringing the LRs of the deceased respondent in an appeal has to be filed within 90 days from the date of death of the respondent and if such an application is not filed within that time, the appeal as against the deceased respondent abates and in terms of Article 121 of Schedule to the Limitation Act, 1963, an application for setting aside the abatement so caused, has to be made within a further 60 days there from.

4. In the present case, while no application had been filed to bring the legal representatives of the deceased respondent on record within 90 days and therefore, the appeal abates and the application nevertheless has been filed subsequently and an application is also filed for setting aside the abatement. A application for bringing the legal representatives of the deceased respondent having not been made within 90 days, there is a delay in making this application and therefore, unless the delay is condoned this application cannot be entertained. Registry has rightly pointed out that an application has to be made for condoning the delay in filing the application for bringing the legal representatives of the deceased respondent on record and it is open to the appellant to so file an application, if the appellant is keen on pursuing the appeal.