
(1990) 02 DEL CK 0020

In the Delhi High Court

Case No : Interim Application No. 4483 of 1987, 8236 of 1988 and Suit Appeal No. 141 of 1984

State Bank of India

APPELLANT

Vs

Amritsar Engineering Works and Others

RESPONDENT

Date of Decision : 16-02-1990

Acts Referred:

Citation : (1990) 1 BC 288 : (1990) 40 DLT 463

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : Jawahar Chawla and G.L. Rawal, for the Appellant;

Judgement

R.L. Gupta, J.

(1) I.A. 4483 of 1987 has been moved on behalf of the plaintiff bank under Order 22, Rule 4 read with Section 151 of the CPC (hereinafter called the Code) for bringing on record the legal heirs of deceased defendant no. 4 Smt. Daya Kaur. It is alleged that on or about 6.11.1986 it transpired to the applicant that Smt. Daya Kaur had died. But the date of her death could not be ascertained despite efforts. On the basis of the information gathered by the field staff of the plaintiff bank it was found that the deceased left behind S/shri Manmohan Singh, Baljit Singh, Surjit Singh and Balbir Singh as her legal heirs and Therefore a prayer is made that they may be ordered to be substituted in place of the deceased Daya Kaur.

(2) The .second .application was moved on 19.9.1988 u/s 5 of the Limitation. Act read with. order 22 rule 9 and Section 151 of. the Code for condensation of delay, and setting aside, the abatement of the suit against the deceased defendant no. 4. In this application it is alleged that the plaintiff bank had come to know on or about 6.1 1.1986 that defendant no. 4 had died leaving behind the aforesaid four legal heirs. Counsel for defendants 1 to 3 who was representing deceased defendant no. 4 also did not inform the court about the death of Smt.

Daya Kaur. It was only then that these defendants in their reply to the earlier application stated that Smt. Daya Kaur had expired on 17.8.1986 and thus there was a delay of about 21 days in filing the application for bringing on record the legal heirs. It is further stated that late filing of the application was not intentional but on account of bonafide reasons of non-disclosure and non-notice by defendants 1 to 3 about the exact date of death of Smt. Daya Kaur. Therefore no prejudice was likely to be caused to the defendants if the delay is condoned and abatement was set aside in the peculiar facts and circumstances of this case.

(3) It may be noted that reply to the first application was filed on behalf of defendants 1 to 3 only on 13.9.1988. In it also two dates of death of Smt. Daya Kaur are mentioned, In the preliminary objections the date of death is 17.8.1986 whereas in para-2 of the reply the date of death is mentioned as 28.7.1986. During the course of arguments however learned counsel Shri G.L. Rawal on behalf of the defendants submitted that the correct date of death was 17.8.1986 and there was typographical mistake in giving the other date as 28.7.1986. However the fact remains that the exact date of death of Smt. Daya Kaur was supplied by the defendants only in their reply dated 13.9.1988. The application to set aside the abatement has been moved within six days of this reply i.e. on 19.9.1988. On merits both these applications have been contested on behalf of the defendants. It was admitted in reply to the earlier application that the proposed legal representatives were the sons of the deceased. It was also stated that all the "heirs were not brought on record and those sought to be impleaded did not inherit anything from the deceased. In reply to the second application i.e. I.A. 8236 of 1988 it was contended that no duty was cast upon the defendants to supply information about the death of Smt. Daya Kaur and the provisions of Order 22 rule 10A of the Code were being misinterpreted.

(4) I have heard the arguments advanced by learned counsel for the parties and have given my careful consideration to the points involved. Learned counsel for the defendants has cited *Devi Dayal and Others Vs. Bhupinder Kumar and Others*, . According to the learned counsel in view of this authority all the defendants including the deceased defendant were necessary parties to the present suit and one of them having died the suit shall stand abated against all the defendants and there was no good reason to condone the delay in making this application for bringing the legal representatives on record. I have carefully gone through this authority. In my view this authority is not applicable to the facts of the present case. In that case one Ch. Ram Narain Bisen had taken different loans from the plaintiff and executed the promissory notes in his favor. Ch. Ram Narain died. In the plaint it was stated that the defendants were the sons and legal representatives of the estate left, by Ch. Ram Narain and they were bound to pay the just debts of their father. It so happened that one of those sons died during the pendency of the suit and his legal representative : were not brought on record. In those circumstances it was held that the deceased defendant was a necessary party to the suit would not have been maintainable had he not been impleaded. The sons of deceased father were held in the nature of joint

promises and in law they constituted one heir. Therefore if in such a case the legal representatives of one of the deceased sons are not brought on record then the suit abates against other sons also because in case the other sons discharged the whole liability of their deceased father, they will not be in a position to sue for contribution against the heirs of their deceased brother as provided in Section 43 of the Contract Act. In the present case however the deceased defendant was a guarantor of the loans raised from the plaintiff by the other defendants and various documents filed on record show that the liabilities of all the defendants was expressly stated to be joint and several. Therefore in case of a decree against all the defendants the plaintiff was well within its rights to recover the entire decretal amount from the deceased alone. Therefore I am of the view that suit will not abate against other defendants even if the plaintiff bank is not allowed to bring on record the legal representatives of the deceased Smt. Daya Kaur.

(5) However I am of the further view that there is sufficient reason to condone the delay in this case and grant permission to the plaintiff to bring on record the legal representatives of the deceased. Order 22 rule 10A of the Code contemplates a duty upon the counsel of a party to the effect that whenever the factum of death of a party comes to the notice of the counsel he must inform the court about it and the court thereupon is to give a notice of such death to the other party. For this limited purpose, it is further stated in this provision that the contract between the pleader and the deceased party shall be deemed to subsist. It is an admitted case on behalf of the defendants that no such information was given by their counsel to the court and Therefore consequently no notice of the death of the said party could be given by the court to counsel for the plaintiff. Thereafter we are left with the bare allegation made in these applications. It is clearly stated in I.A. 4483 of 1987 that it was on or about 6.11.86 that the plaintiff came to know about the death of Smt. Daya Kaur. Even at that time the date of her death was not ascertainable despite their best efforts. Inspire of this allegation no effort was made on behalf of the defendants' counsel till 13.9.1988 to supply the exact date of death of Smt. Daya Kaur either to the court or to counsel for the plaintiff. Therefore it cannot be said that to the knowledge of the plaintiff Smt. Daya Kaur died on 17.8.1986. In these circumstances I am of the view that a delay of 21 days in filing this application under Order 22 Rule 4 of the code for bringing on record the legal heirs of the deceased Smt. Daya Kaur is not much. In the peculiar facts of the case Therefore there is sufficient reason to condone the delay,

(6) I may also mention another argument raised on behalf of learned counsel for the defendants. He has urged that the earlier application after being filed on 9.12.1986 was returned with an objection. It was refiled in the Registry only on 11.3.1987. According to him the learned counsel should have filed this application after removing objections within a week and this having not been done the delay should not be condoned. In this respect it may be noted that in 1986 there was no practice direction that an application should be refiled within a

week after removing the objections. In this respect actually Rule-2 in Chapter-4 of the Delhi High Court (Original Side) Rules 1967 applies. According to this rule in case a document is found to be defective, it shall, after notice to the party filing the same be placed before the Registrar. The Registrar may then for sufficient cause return the said document for rectification or amendment and for this purpose may allow the party concerned such reasonable time as he may consider necessary. If however a party fails to take any steps, for the removal of the defects within the fixed time, the Registrar may decline to registrar the documents for reasons to be recorded in writing. The endorsement on this application made by the Registry does not show that after an objection was made by the office it was put up before the Registrar. It further does not show if the Registrar prescribed any time for its refiling after removing the objections. In these circumstances it seems difficult to accept the contention of the learned counsel for the defendants that this application may not be entertained.

(7) In view of the aforesaid reasons the delay in bringing the legal representatives on record is condoned and it is ordered that the legal representatives of the deceased Smt. Daya Kaur as stated in I.A. 4483 of 1987 shall be brought on record. The amended memo of parties shall be filed by the plaintiff within three weeks with advance copy to learned counsel for the defendants.

(8) The case be now listed before the Deputy Registrar for further proceedings on 8th March. 1990. Both the applications stand disposed of.