
(1977) 02 CAL CK 0021
In the Calcutta High Court
Case No : Civil Revn. No. 14 of 1975

State Bank of India

APPELLANT

Vs

S. Wazir Singh and Others

RESPONDENT

Date of Decision : 24-02-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Article 120

Citation : AIR 1977 Cal 241 : (1977) 1 CALLT 287 : (1977) 1 CompLJ 261 : 81 CWN 696

Hon'ble Judges : N.C. Mukherji, J;B.C. Ray, J

Bench : Division Bench

Advocate : Subrata Ray, for the Appellant;

Final Decision : Dismissed

Judgement

N.C. Mukherji, J.—This is an application for setting aside the order dated 18th November 1976 passed in Lawazima by the Additional Registrar recording the note of abatement of the Rule as against the opposite party No. 1.

2. On May 1, 1975 S. Wazir Singh, the opposite party No. 1, died intestate. From an affidavit-in-opposition it appeared that S. Wazir left behind besides Smt. Surendra Kaur another daughter and one son. In spite of the best efforts the petitioner could not ascertain their names and address. Subsequently the petitioner filed an application for substitution of the heirs and legal representatives of the opposite party No. 1. The Additional Registrar recorded an order of abatement of the Rule as against the opposite party No 1 presumably on the ground that the said application for substitution was not filed within 90 days. It is stated that the petitioner was advised by the learned Advocate that in cases of revision application the time to file an application for substitution will be three years and not 90 days. In the circumstances it is prayed that the order dated 18th November 1976 passed by the learned Additional Registrar recording the note of abatement of the Rule as against the opposite party No. 1 be set aside.

3. The only point for consideration is whether an application for substitution of the legal heirs in a revision case is required to be filed within 90 days from the date of death or within three years. It may be stated at the beginning that there are conflicting decisions on this point.

4. Mr. Subrata Ray, learned Advocate for the petitioner first refers to a Full Bench decision of Lahore High Court reported in AIR 1949 Lain 186, (Mohd. Sadaat AH Khan v. The Administrator, Corporation of City of Lahore). It has been held in this case : "Order 22, Rule 3, C. P. C. is not applicable to revisions. It cannot be read in conjunction with Section 141 as Section 141 is so drafted as to enable a court to apply the procedure in regard to suits to such proceedings as are in *pari materia* with suits and thus original in character. A revision is very much unlike a suit. The procedure provided for suits would be mostly inapt and inappropriate to proceedings in revision. Further Article 176, Lim. Act, cannot be made applicable to a revision. Hence where a party going in revision dies pending the revision petition and an application is made by his legal representatives to be brought on record after the expiry of the period of 90 days, the petition for revision cannot be dismissed on the ground of abatement".

5. Mr. Ray next refers to a Full Bench decision of Rajasthan High Court reported in Babulal and Another Vs. Mannilal, . It has been held in this case that Order 22, C. P. C., applies to the case of suits and appeals. It does not govern the cases of revision application.

6. Mr. Ray next refers to another Full Bench decision of Allahabad High Court reported in Chandradeo Pandey and Others Vs. Sukhdeo Rai and Others, . This case lays down that "An application for substitution of heirs in a revision is an application u/s 151, C. P. C., and hence the period of limitation for bringing the heirs of deceased opposite party in revision is three years under Art 137 of the Lim. Act, 1963."

7. Mr. Ray also relies on a recent decision of a single Judge of our Court reported in (1976) 1 CLJ 492, (Md. Israil v. S M. Amiral Islam). It has been held by R. Bhattacharya, J., "Reading the provisions of Order 22 of the Code, it appears that there is a provision for substitution in suits and in appeals and some other matters but not in case of revisional application filed u/s 115 of the Code. Revisional applications are not original proceedings. This is clearly a discretionary matter with the court. If for disposal of revisional applications, the High Court thinks that for ends of justice any party is to be added or if at the instance of a party any substitution is necessary though belated, for ends of justice certainly and for proper decision, the High Court should allow substitution or addition of the parties. There can be no question of limitation in this respect". It appears that his Lordship in coming to the above conclusion relied only on Babulal and Another Vs. Mannilal, . This point came up for decision long ago before a Division Bench of our High Court in (1913) 18 CLJ 141, (Anandamoyi Dasi v. Rudra Mahanti). Sir Asutosto Mooker-jee. J. relying on an earlier decision reported in (1912) 16 CLJ 571, (Deo Saran v. Syedunnessa) held that "The principle

recognised in Rule 3 of Order 22 of the C. P. C. is applicable not only to suits but also to proceedings in revision." In AIR 1949 Lah 186 , (Mohd. Sadaat Ali Khan v. The Administrator, Corporation of City of Lahore). Their Lordships considered this decision, but their Lordships were of the opinion that the observations made by Sir Asutosh Mookerjee, J. presiding over the Division Bench were obiter. We do not agree with their Lordships that the principle of law as laid down by Sir Asutosh Mookerjee, J. was obiter. It may be mentioned that before R. Bhattacharya, J. laid down in (1976) 1 CLJ 492 that the provisions of Order 22 of the Code do not apply in revisional application there was a decision by Salil Kumar Dutta, J., in (1975) 2 CLJ 191, (Md. Eusuf Mondal v Md. Omar Ali). His Lordship held that "Rules as to abatement apply as much to proceedings in revision as to appeals. The revisional jurisdiction exercised by the High Court is a part of the general appellate jurisdiction and there is no reason why the provisions of Order 22 will not apply to revision cases in the High Court". It appears that this case was however not placed before R. Bhattacharya, J. In coming to the above conclusion S. K. Dutta, J. considered the case reported in AIR 1949 Lah 186; but his Lordship relied on (1913) 18 CLJ 141 and was of the opinion that the matter is no longer in controversy in view of the observation of the Supreme Court in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, . His Lordship quoted the relevant portion which occurs at page 4.

"When the aid of the High Court is invoked on the revisional side it is done because it is a superior Court and it can interfere for fine purpose of rectifying the error of the court below. Section 115 of the C. P. C. circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the statute basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense".

Their Lordships of the Supreme Court in making the above observations relied on 59 Ind App 283 : (AIR 19112 PC 166), Nagendra Nath Dey v. Suresh Chandra Dey). The Judicial Committee laid down "Any application by a party to an Appellate Court to set aside or revise a decree or order of a Court subordinate thereto, is an appeal within the meaning of Article 182 (2) of Schedule 1 of the Indian Urn. Act, 1908."

Their Lordships also relied on a Full Bench decision of the Madras High Court reported in P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others, . It was held in this case that "Article 182 (2), Lim. Act, applies to Civil Revision petitions as well and not only to appeals in the narrower sense of that term as used in the C. P. C." After carefully taking into consideration the decisions referred to above, we are inclined to rely on the Bench decision of this Court reported in (1913) 18 CLJ 141, Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, . We are therefore of the opinion that the provisions

of Order 22 apply in the case of revisional applications as well and that being so, we hold that as the application for substitution of legal heirs was filed beyond 90 days the learned Additional Registrar was right in recording a note of abatement of the Rule as against the opposite party No. 1 and the order therefore should not be recalled. As has already been stated there are two conflicting recent decisions of our High Court by two learned Judges. For the reasons stated earlier we agree with the view stressed by S. K. Dutta, J. in (1975} 2 CLJ 191 and we disapprove the view expressed by R. Bhattacharya J. in (1976) 1 CLJ 492. This decision, however, will not prevent the petitioner from taking proper step for setting aside abatement if it is advised to do so.

B.C. Ray, J.

8. I agree.