
(1972) 10 GUJ CK 0004
In the Gujarat High Court

State of Gujarat and Others

APPELLANT

Vs

Thakore Hemsing Abhesing (Since decd. though his heir) and
Others

RESPONDENT

Date of Decision : 27-10-1972

Acts Referred:

Citation : (1973) 14 GLR 945

Hon'ble Judges : T.U. Mehta, J;S.H. Sheth, J

Bench : Division Bench

Judgement

S.H. Sheth, J.—This Civil Application has been filed to bring on record four heirs and legal representatives of the original respondent No. 1 Thakore Hemsing Abhesing. Thakore Hemsing Abhesing died on 15th February 1972. The State did not make any application within time to bring any of his heirs and legal representatives on record. Thereafter, Civil Application No. 1815 of 1972 was filed by the appellant-State to bring one heir and legal representative of the deceased Thakore Hemsing Abhesing on record. That application was very hotly contested by the heir who was sought to be brought on record on the ground that even though the State of Gujarat had known that Thakore Hemsing Abhesing had died as early as on 15th February 1972 it had not made any application within time for the purpose and had allowed the appeal to abate. In spite of the fact that it was hotly contested, we showed to the State of Gujarat indulgence and granted that application on 9th October 1972 after setting aside the abatement and condoning delay. Now this application has been filed to bring four more heirs of Thakore Hemsing Abhesing on record.

2. On 14th September 1972 the State of Gujarat came to know from the affidavit in reply filed by that heir of Thakore Hemsing Abhesing who was sought to be joined by Civil Application No. 1815 of 1972 that there were other heirs of Thakore Hemsing Abhesing who were not brought on record. In spite of the fact that one of the heirs made a categorical statement in his affidavit in reply as early as on 14th September 1972 of which a copy was served upon the learned

Government Pleader no action was taken by the State of Gujarat to bring other heirs on record. Thereafter, First Appeal No. 501 of 1964 was placed on Board for final decision. It reached final hearing on 19th October 1972 and even by that time no application had been made by the State of Gujarat to bring other heirs of Thakore Hemsing Abhesing on record. In spite of their having known on 14th September 1972 that there were other heirs and legal representatives of Thakore Hemsing Abhesing they made no application to bring them on record. After the matter was heard for some time on that day it was stated at the Bar by the learned advocate appearing for that heir of Thakore Hemsing Abhesing who was brought on record that the respondent No. 2 had died as early as in 1967. The learned Assistant Government Pleader appearing for the State of Gujarat thereupon applied for time in order to enable him to make an application to bring the heirs and legal representatives of the deceased respondent No. 2 on record. If the learned advocate for the heir of the respondent No. 1 had not made a statement on 19th October 1972 that the respondent No. 2 was already dead as early as in 1967 the appeal would have been finally decided at that time. Since the hearing of the appeal was adjourned in order to enable the learned Assistant Government Pleader to make an application to bring the heirs and legal representatives of the deceased respondent No. 2 on record, he has now taken an opportunity to file this Civil Application to bring on record other heirs of the original respondent No. 1 Thakore Hemsing Abhesing. In fact, on 19th October 1972 when the appeal came up for hearing, Mr. Oza, appearing for one of the heirs of Thakore Hemsing Abhesing had already started arguing that in absence of other heirs of Thakore Hemsing Abhesing the original respondent No. 1 the appeal had abated. It was also stated in the affidavit in rejoinder in that Civil Application that the State of Gujarat would bring other heirs of Thakore Hemsing Abhesing on record if the Court so desired. The Court on its own never desires any heirs or any legal representatives of any deceased respondent or appellant to be brought on record. It is the duty of the appellant to make an application. He cannot seek any direction or advice from the Court in that behalf. The facts of this case are so glaring that it is extremely difficult for us to grant the application. Firstly, the State of Gujarat never made any attempt through its official machinery to ascertain whether a respondent to an appeal which it had filed had been alive or dead. Secondly, it took partial steps only when the fact was brought to the notice of the Court in August 1972 and made Civil Application No. 1815 of 1972 to bring one of the heirs of the deceased Thakore Hemsing Abhesing on record. Thirdly, even though it got the information as early as on 14th September 1972 that Thakore Hemsing was survived by other heirs and legal representatives it took no steps whatsoever to make any Civil Application for bringing other heirs on record. Fourthly, it allowed the appeal to be heard on 19th October 1972 and also allowed the learned advocate for the respondents to raise a preliminary objection to the maintainability of the appeal on the ground that it had abated on account of other heirs and legal representatives of Thakore Hemsing Abhesing having not been brought on record. Next, it was only after the contention as to the abatement of the appeal had been raised by the learned

advocate for the respondents on 19th October 1972 and had proceeded with his arguments by citing decisions of the Supreme Court and other Courts in support of his contention that this application was made by the State of Gujarat to bring other heirs and legal representatives of Thakore Hemsing Abhesing on record. Next, the learned Assistant Government Pleader made a statement at the Bar on 9th October 1972 when Civil Application No. 1815 of 1972 was heard that the State of Gujarat would take the consequences of its failure to bring other heirs and legal representatives of Thakore Hemsing Abhesing on record. These circumstances bear eloquent testimony to deliberate negligence and calculated indifference on the part of the State of Gujarat in a matter of this type. They also indicate wanton regard for the law of limitation to which both the State and the private citizens are equally subject. Law of limitation comes down equally heavily upon both. If the period of limitation for this purpose commences to run for a private appellant from the date of the death of a respondent as it does, it does not commence to run for the State from the date of its knowledge of the death of a respondent. We cannot adopt one standard for private appellants and another for the State. The State ought to remember that it is governed by the same law by which all the rest are governed.

3. We regret to note that the State in a large number of cases of this type seems to be thinking that law of limitation begins to operate against it only from the date on which it acquires knowledge of the death of a respondent when the advocate appearing for the deceased respondent makes a statement at the Bar. It appears that it has also been thinking that it has a right to condonation of delay and setting aside of abatement on the bare ground that it did not know of the death of a respondent before the latter's advocate stated it at the Bar and that thereafter it took time to make inquiries to discover the date of his death and the names and addresses of his heirs. These are no grounds for condoning delay and setting aside abatement. It merely shows total inaction and thorough indifference on its part. They cannot be encouraged. The State has adequate official machinery to keep itself informed of all such things in all appeals filed by it. In every village, it has got revenue and police officers. In every Taluka Town and in every district town, it has got many other superior officers. If it charges its officers in villages, towns and cities with the duty of making periodical inquiries after posting them with the information relating to the names and addresses of the respondents in its appeals and of reporting their deaths to the Government Pleader without any delay whatsoever, it shall cease to seek indulgence of the Court for condoning delay and setting aside abatement and shall also cease to pray for granting to it such reliefs with a bang as it appears to do now.

4. The aforesaid circumstances, in our opinion, heavily militate against our granting this Civil Application. We are constrained to say that this application is not a bona fide application.

We, therefore, reject it.