

**(1973) 06 SHI CK 0008**

**In the High Court Of Himachal Pradesh**

**Case No : C.M.P. No. 356 of 1972 in RFA. (LA) 15 of 1970**

State of Himachal Pradesh

APPELLANT

Vs

Dhampu

RESPONDENT

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**Date of Decision : 26-06-1973**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9(2)

**Citation : AIR 1974 HP 19**

**Hon'ble Judges : Chet Ram Thakur, J**

**Bench : Single Bench**

**Advocate : B. Sita Ram, General, for the Appellant; O.P. Sharma, for Kala and Chanchalo Devi, P.N. Nag, for Munshi Ram, (L. Rs.), for the Respondent**

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## **Judgement**

Chet Ram Thakur, J.—In connection with the construction of the Pong Dam, the Government had also acquired the land of Dhampu in Tikka Behari, Mauja Dugha, Tehsil De-hra, District Kangra. It appears that he was not satisfied with the award of the Collector and he filed his objections before the Collector for referring the same for adjudication to the Civil Court. The Additional District Judge, it appears, enhanced the award vide his judgment, dated 24th September, 1970.

2. The State Government filed an appeal against this judgment of the Additional District Judge enhancing the compensation amount on the reference petition being made by Dhampu claimant. The appeal was filed on 19th December, 1970. On 1st July, 1972, the Advocate-General presented this application CMP No. 365 of 1972. He had stated therein that the claimant-respondent died on 13th February, 1972 as it had now been learnt by him and that he was an oustee from Tikka Behari to whom land had been allotted in Rajasthan. That one Munshi Ram son or Nathu Ram made an application in the Court of Additional District Judge on 11th May, 1972 in the execution proceeding being taken against the appellant in that Court in which he stated that Dhampu had died on 13th February, 1972 and a registered will had been executed by him in his favour on 9th August, 1961

and the compensation money be paid to him. Thereafter a thorough enquiry had to be made regarding the heirs and legal representatives of the deceased and the appellant came to know on 23rd June, 1972 that Dhampu died on 13th February, 1972, leaving behind his daughters, namely, Smt. Kala Devi, Smt. Chanchalo Devi and Smt. Kanta Devi alias Gadhoo minor. As the deceased was an oustee therefore, his whereabouts and place of residence were not known to the appellant. Besides, the names and addresses of his legal representatives could be ascertained with extreme difficulty, therefore, he prays for the condonation of the delay in filing the application for bringing the legal representatives of Dhampu in time and that the abatement of the appeal be set aside. This application was opposed by the legal representatives of Dhampu. On the pleadings the Court framed the following issues:--

1. Whether the application is within time?
2. Whether there are sufficient grounds for setting aside the abatement?
3. The appellant-applciant examined one Shri Gurbaksh Singh, Zildar of Beas Project at Talwara. ISSUE NO. 1:
4. It is admitted by the appellant that Dhampu died on 13th February, 1972 and the application was made on 1st July, 1972 after the expiry of 90 days which is the limitation for making an application for bringing the legal representatives on the record. Therefore, the appeal did abate for not having filed the application within the stipulated period to bring the legal representatives on record.
5. The appellant filed the application under Order 22, Rule 9 of C. P. Code to set aside the abatement of the appeal and under Article 171, Limitation Act (1908) a period of sixty days is fixed for making an application. Therefore, in that way the application is within time for setting aside the abatement. Hence issue No. 1 is decided in favour of the applicant. ISSUE NO. 2:
6. In case the application to bring the legal representatives of the deceased-respondent on record is not made within a prescribed period and the appeal is ordered to abate against the deceased-respondent, in that case Order 22, Rule 9, Sub-rule (2) applies for an order to set aside the abatement and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit, In order to decide whether there was any sufficient cause for delay the test to be applied is whether there was any negligence on the part of the applicant. We have to look into the circumstances of the case. Shri Gurbux Singh has been examined by the appellant-applciant to show that there was sufficient cause in making this belated application for bringing the legal representatives on the record and to set aside the abatement and the circumstances are that the State learnt about the death of Dhampu on 11th May, 1972, when the Additional District Judge directed the department to file a reply to the application in a land reference execution case made by Munshi Ram who claimed himself to be an heir of Dhampu deceased. Thereupon the department

entered upon a local enquiry and learnt that Dhampu had died on 13th February, 1972, leaving behind two daughters and one daughter's daughter as legal representatives. Thereafter the appellant made an application in the High Court on 30th June, 1972. In cross-examination the witness deposed that the enquiry about the death of Dhampu and about his legal representatives was conducted by him. He could not say where Dhampu died nor he directed any inquiry with regard to the place of his death. Dhampu according to him had been allotted land in Rajasthan. He betrayed his ignorance if Dhampu was residing at Tikka Rehari, Mauza Dugha, Tehsil Dehra at the time of his death. He has further stated that there is a separate department dealing with the cases of the oustees regarding their rehabilitation. The witness has also further stated that he entered upon an inquiry after one week of the knowledge of the death of Dhampu. He proceeded to Tikka Bihari and found that the village had been vacated by the oustees and there was no person living in the village. Then he went to the village of Bishan Devi, the daughter of Dhampu deceased at Village Kimban in Tehsil Nurpur, and there he learnt that Bishan Devi too had died leaving behind three daughters. He did not remember the date of his visit to village Tikka Behari. He proceeded to the village of Bishan Devi on the information given by the Patwari who assisted him in the inquiry. He did not produce the report which is alleged to have been submitted to the Executive Engineer, Inspection Division of Pong Dam. This is the only evidence adduced by the applicant to show that there exists sufficient cause for setting aside the abatement. Now, we have to see whether this evidence discloses a sufficient cause for setting aside the abatement. From the statement of the witness it appears that the department did not know about the death of Dhampu till it received a notice from the Court of the Additional District Judge, in the execution proceedings taken out by one Munshi Ram claiming himself to be a legal representative of Dhampu deceased for payment of compensation amount. No reason excepting this has been disclosed in the statement of this witness that Dhampu had been allotted land in Rajasthan and that the village Behari had been vacated. But this does not appear to be a sufficient cause. It is apparent from the statement of this witness that there is a Rehabilitation Department dealing with the cases of the oustees regarding their rehabilitation and the department is also an inter-connected department with this department to which the witness belongs. Therefore, in these circumstances it was not difficult for the witness to have enquired from the Rehabilitation Department about the whereabouts of Dhampu deceased. The applicant it appears did not care to know the whereabouts of the deceased until it was learnt from the Court of the Additional District Judge on the notice being issued in the execution proceedings brought out by Munishi Ram that Dhampu had died. The reason that he had been allotted land in Rajasthan is also not a sufficient ground. It was for the appellant to show if he had made any efforts why he could not know about the death of Dhampu despite his efforts if he had made any efforts on having some cause to apprehend that the respondent might have died, especially when the correctness of those reasons is challenged by the other party. Merely because he was an oustee and land had been allotted in Rajasthan

is no ground to hold that the applicant was absolved from his duty to know about the whereabouts of the respondent when the appellant had come in appeal and there was a regular department known as Rehabilitation Department which had the full address and the particulars of the oustee and the place of his residence in Rajasthan where the land was allotted to him. According to the cross-examination directed by the respondent, Dhampu had not shifted to Rajasthan and he was still there in village Behari. The witness could not deny this fact if he was still there. He simply stated that the village had been vacated and he was not in a position to state whether the village of Dhampu had been submerged. In fact the witness had betrayed his ignorance about the location of the village itself. His knowledge is based on the report of the Patwari who had not been produced. It was the Patwari who had assisted him in the inquiry and it is doubtful if any inquiry at all had been conducted because he had not produced the report which was the best evidence in the case to test the veracity of his statement. The Statement is quite vague and full of contradictions. His bald statement that he was allotted land in Rajasthan without anything more would not amount to his disclosing a sufficient cause to set aside the abatement. There appears to be negligence on the part of the applicant.

7. The learned Advocate-General wants that the Court should readily accept whatever the witness appearing on behalf of the applicant has tried to explain in order to cover up his default. In such a case where he wants to set aside abatement of appeal he has a duty to make regular enquiries from time to time about the health or existence of the opposite party. Further from the statement of the witness it is apparent that after the department came to know about the death of Dhampu the witness entered upon the inquiry after a week thereafter. So it is nothing but negligence on the part of the applicant who did not realize the importance of the matter.

8. The learned Advocate-General has urged that the witness could not enter upon the inquiry unless he had received any information from his department or from his superior officers. That is true, but a department of the Government, when it is a party cannot claim any better treatment than the one which is meted out to a private party. The State as a party applying to set aside abatement beyond the prescribed period is not entitled, in showing any cause, to any concession more than a private party and there can scarcely be any question of construing the expression sufficient cause more liberally merely because the party in default is the Government, *The State of Uttar Pradesh Vs. Nauratan Singh, In Union of India (UOI) Vs. Ram Charan and Others*, it has been held that the mere allegation that Government did not come to know of death of defendant or respondent prior to information of death furnished by other side cannot constitute sufficient cause. The applicant has not been able to show anything which was beyond the control of the applicant from knowing about the death of the respondent and it was on the appellant desiring to set aside the abatement of an appeal to prove that he was prevented by sufficient cause from continuing the appeal.

9. The learned Advocate-General has further urged that there was no rebuttal from the side of the respondent. In the absence of any rebuttal, this evidence of RW-1 was sufficient to hold that the plaintiff had established the plea of sufficient cause. But I am not fully persuaded to hold that any rebuttal was necessary in this case when the witness has not been able to disclose any sufficient cause so as to make out a prima facie case even. On the contrary there was no inquiry despite the fact that the applicant has no (sic) knowledge about the death of Dhampu. The department took the matter very lightly and then proceeded to conduct the inquiry at leisure as already stated above and the inquiry report has not been produced and the statement of the witness is quite vague and not convincing. The inquiry has been reduced into writing but oral evidence to prove the same has been adduced and which is inadmissible. The best evidence has been withheld and an adverse inference u/s 114 (g) of the Indian Evidence Act must be drawn against the applicant.

10. For the above reasons this issue also is decided against the applicant.

11. The result, therefore, is that the application for setting aside the abatement fails and is hereby dismissed with costs assessed at Rs. 100/-.

12. The appeal be placed before a Division Bench for further orders.