

(2003) 10 MP CK 0018
In the Madhya Pradesh High Court
Case No : Second Appeal No. 156/85

State of Madhya Pradesh

APPELLANT

Vs

Jay Singh (deceased) through his L.Rs. Surendra Singh and
Another

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, 100, 9
Limitation Act, 1963 — Section 5

Citation : AIR 2004 MP 66 : (2004) 1 MPHT 38 : (2004) 1 MPLJ 114

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : S. Mukati, for the Appellant; T.N. Singh and Hemlata Gupta, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a plaintiff's second appeal u/s 100 of CPC. The following substantial question of law was formulated at the time of admission by order dated 18-6-1985 :--

"Whether on the facts and in the circumstances of the case, the Courts below were justified in holding that the suit had abated ?"

The suit was instituted by State of Madhya Pradesh as plaintiff for declaration that the exparte decree obtained by defendant No. 1 Jai Singh in Civil Suit No. 839 of 1975 on 3-3-1978 against the plaintiff is without jurisdiction and it is not binding on the plaintiff. By this decree a cash allowance of Rs. 100/- per month was granted to defendant No. 1 - Jai Singh. The suit was filed on 7-10-1980. On 30-6-1982, Counsel for the defendant No. 1 submitted an application stating therein that defendant No. 1 - Jai Singh has died four months ago. As mentioned in order, dated 30-10-1984 of the Trial Court, defendant No. 1 - Jai Singh had

died on 17-2-1982. An application describing it to be under Order 22, Rule 4 of CPC and Section 5 of Limitation Act, 1963 was submitted before the Trial Court on 25-9-1982 proposing the name of Surendra Singh son of deceased defendant No. 1 - Jai Singh as his legal representative by the plaintiff in which these facts were stated.

The Trial Judge, after making an inquiry, by his order dated 30-10-1984 held that there was sufficient cause in not making the application upto 23-8-1982, but he found that there was not sufficient ground for condonation of delay from 23-8-1982 to 25-9-1982 and therefore, rejected the application for bringing on record the legal representative of deceased defendant No. 1. The plaintiff filed an appeal against this order and that was dismissed in motion hearing.

Learned Counsel for both the sides have been heard and the record of the Trial Court has been perused. Defendant No. 1 - Jai Singh died on 17-2-1982. The factum of his death was intimated by his Counsel on 30-6-1982. The Counsel for the plaintiff wrote a letter on 30-7-1982 to the Sub Divisional Officer for ascertaining the names of the legal representatives of the deceased defendant. The reply was given by the Sub Divisional Officer on 23-8-1982 by his letter (Ex. P-5). As already mentioned, the Trial Court has found sufficient cause for condonation of delay upto 23-8-1982 but, declined to condone the delay from 23-8-1982 to 25-9-1982. It appears that after the receipt of the letter (Ex. P-5) from Sub Divisional Officer by the Counsel for the plaintiff he must have taken some time to draft the application which was submitted before the Court. Therefore, the delay from 23-8-1982 to 25-9-1982 should also have been condoned. It was not necessary to take a very strict view in this respect. As a matter of fact the application under Order 22 Rule 4 should have been described as an application under Order 22 Rule 9 of CPC for setting aside the abatement. The Court could treat this application as if made under Order 22 Rule 9, CPC. The learned Counsel for the appellant has cited two decisions i.e., Dr. Narendra Nath Barman v. The Gauhati Metropolitan Development Authority and Ors., AIR 2000 Gauhati 90, and Smt. Shakuntala Devi Vs. Banwari Lal and Others, It is well settled that the provisions of the CPC are to advance the cause of justice and a party to the litigation should not be allowed to suffer on account of technicalities of the case. Therefore, in the interest of justice, the application under Order 22 Rule 4, CPC could be treated as an application under Order 22 Rule 9 of CPC for setting aside the abatement. There was also the application u/s 5 of the Limitation Act, 1963.

Recently, the Supreme Court has laid down in Ram Nath Sao and Ors. v. Gobardhan Sao and Ors. (AIR 2002 SC 1201) what should be the approach of the Courts in dealing with the application under Order 22 Rule 9 of CPC and Section 5 of the Limitation Act, 1963. The Supreme Court after referring to the earlier decisions on this point has held :--

"The expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a

liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There can not be a strait-jacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the Court should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the Courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper-technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, Courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

Now examining the facts of the present case in the light of the legal position discussed above it must be held that the delay ought to have been condoned by the Trial Court. The Trial Court has accepted the explanation of the plaintiff for the delay upto 23-8-1982. The delay from 23-8-1982 to 25-9-1982 should also have been condoned in view of the facts that deceased defendant died at Jaipur, it took some time to ascertain the names of his legal representatives and in drafting the application for submission before the Trial Court. The interest of justice required that the delay should have been condoned. The Appellate Court did not examine the matter properly and dismissed the appeal in limine. In the Supreme Court decision cited above, delay of several years was condoned. In the present case, there is much less delay and the period of delay which was not condoned was of a month only.

The answer to the substantial question of law referred above, which was framed in this appeal is that on the facts and in the circumstances of the case, the delay should have been condoned and the abatement of the suit should have been set aside.

In the result, this appeal is allowed. The impugned orders of the two Courts below are set aside. The application of the plaintiff under Order 22 Rule 4 of CPC which is treated to be as application under Order 22 Rule 9 of CPC read with Section 5 of the Limitation Act, 1963 is allowed and the abatement of the suits is set aside. The parties are directed to appear before the Trial Court on 1-12-2003 for further proceedings.

Costs as incurred.