(1986) 01 DEL CK 0043

In the Delhi High Court

Case No : First Appeal No. 51 of 1985

Tejwant Kaur and Others APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 23-01-1986

Acts Referred:

Citation : (1986) 10 DRJ 239

Hon'ble Judges : D.K. Kapur, C.J;N.N. Goswamy, J

Bench : Division Bench

Advocate : S. Kumar and S.S. Shroff, for the Appellant;

Judgement

D.K. Kapur, C.J.

(1) We have heard this appeal at some length. The only question involved was the question of substituting legal representatives of the deceased defendant. We have gone through the facts on record and also examined the circumstances in which the legal-representatives of the deceased were added as parties. It appears that there was ''only one defendant to the suit, namely, late Gurbax Singh, who was a retired Wing Commander in the Army. He had been granted certain facilities by the plaintiff bank in respect of certain business he was carrying on at Greater Kailash. It appears that he was served with some difficulty by substituted service and he appeared once to ask for time to file a written statement but he never filed the same. I.A. 1361/83 was moved by the plaintiff bank to substitute the legal representatives of the said Gurbax Singh on the allegation that they had learnt on 5th January, 1983 that he had died. It was further stated that there was great difficulty in finding out the names and addresses of the legal representatives. This application gave the addresses of the legal representatives as being resident of E-119 Greater Kailash and of New York. In this case also the legal representatives were served through substituted service and the application was allowed per order dated 20th February, 1984. In March, 1984, an application was moved to set aside this order by the legal representatives. This application was followed by another application on behalf of

the plaintiff which is is 5692/84 which was an application u/s 5 to condone the delay in applying for substitution. Both these applications, the, application to join legal representatives and to condone the delay have been allowed by the judgment under appeal.

(2) Learned counsel for the legal representatives contends that the application for joining legal representatives was initially filed late and the suit has abated and consequently unless there was an application to set aside the abatement, the entire procedure followed by the Court and the party was wrong. He also contends that reference of Order 22 Rule 4(4) CPC . made by the trial court in dealing with the application of the plaintiff was not justified. He contends that that rule applies only if the application is moved before the &abatement takes place and not afterwards. He wants to refer to some judgments of the High Court of Calcutta and Orissa passed under the corresponding provision of CPC which was in force in those High Courts before the 1976 amendment of the Civil Procedure Code. On The other hand, counsel for the respondent i.e the plaintiff wants to refer to another series of judgments where the amendments made by the 1976 change in the CPC have been interpreted in a different way.

(3) We think this controversy is quite unnecessary in this case The plaintiff was a bank and the defendant was a person who allegedly was a debtor of that bank. The plaintiff filed a suit in the ordinary way and during those proceedings the defendant died. Naturally, the plaintiff being an institution could not be easily aware of the death of the defendant. The application for joining the legal representatives was, Therefore, moved with some delay. This delay was occasioned by not knowing when he died and not knowing who were his legal representatives. According to the counsel for the appellant, the manager of the Bank knew all this. We are not even aware as to who this manager of the bank was because the correspondent and other documents on record seem to show that there was a process of hide and seek between the bank and the legal representatives. The working place of the deceased was at Greater Kailash in some market and he was living in some house in Greater Kailash but, apparently after his death his legal representatives were found in Saket which is a different colony. We fail to understand as to how the bank could ascertain as to who were his legal representatives and where they were living and that accounts for delay. It is a quite natural delay which the circumstances seem to show are likely to occur and reoccur in hundreds of cases. The affidavit of the defendant to the effect that they had informed the bank of the death of their father and had sent a card indicating the date of Bhog ceremony and also sent a copy of the death certificate to the bank do not seen to be fully correct. We see no reason why such steps should have been taken, and if they had been taken we fail to understand why the bank should be making applications for substituted service and should have spent a huge amount just to trace out where the legal representatives were. The circumstances do not support this at all. Even if there was delay in applying for joining of legal representatives, this was just the case to which Section 5 should have been applied, and it was rightly applied by the

learned trial Court. For this reason we think we should not interfere with the Judgment, and accordingly we dismiss the appeal and leave the parties to bear their own costs.

