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(1970) 05 DEL CK 0031

In the Delhi High Court

Case No : Regular First Appeal No. 514 of 1968

Union of India — APPELLANT

Vs

Lakhpat — RESPONDENT

Date of Decision : 29-05-1970

Acts Referred:

Citation : (1970) ILR Delhi 846

Hon'ble Judges : S.N. Shankar, J;P.N. Khanna, J

Bench : Division Bench

Advocate : D.K. Kapur and J.R. Singh, for the Appellant;

Judgement

P.N. Khanna, J.

(1) The Union of India filed this Regular First appeal against the order dated August 28, 1968 of the Additional District Judge, Delhi, in reference proceedings u/s 18 of the Land Acquisition Act. The only Respondent 1mpleaded was Lakhpat, who was originally the sole applicant before the learned Additional District Judge.

(2) It appears that Lakhpat died on November 27, 1966 and his legal representatives were duly brought on record by order dated March 31, 1967 of the Additional District Judge, Delhi, before whom the reference was then pending against the Union of India.

(3) The award was made on August 28, 1968. The Union of India contends that it was misled by the certified copy of the award against whom the present appeal is filed, where the name of Lakhpat was shown, though erroneously, as the sole petitioner. For this reason, the name of Lakhpat deceased in the memorandum of appeal is said to be a mere misdescription. Cm 800 of 1969 was filed on behalf of the appellant under sections 151 and 152 of the CPC for impleading, in place of Lakhpat, his heirs and legal representatives. Another application, Cm 801 of 1969 was filed u/s 5 of the Limitation Act praying that the delay in filing the application be condoned.

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(4) These applications came up for hearing before one of us (S. N. Shankar J.). Several decision were cited, especially in the cases of Union of India v. Harpal and others, (CMs 372 and 373 of 1969 in Rfa 617 of 1969, decided by a division Bench of this court on November 7, 1969) and Union of India v. Tekan and others. (CMs 187 and 188 of 1969 in Rfa 344 of 1968, decided by a single Judge of this Court, on February 3, 1970). Owing to conflicting views in the said decision and having regard to the importance of the question involved, especially when it was repeatedly coming up for consideration in appeals filed under the Land Acquisition Act, the learned Judge (S. N. Shankar, J.) ordered that the said miscellaneous applications be placed before the Hon''ble Chief Justice for Constituting a larger Bench for finally deciding the issues. It is under these circumstances that the matter has come up before us.

(5) From the facts of the present case, it is clear that it was the legal representatives of Lakhpat, deceased, who continued the proceedings on the reference u/s 18 of the Land Acquisition Act before the learned Additional District Judge, Delhi. The Union of India, being a party to those proceedings, contested the claim of the legal representatives. The final judgment and award passed against the Union of India was thus, in favor of the aforesaid legal representatives and not in favor of Lakhpat, who was already dead. inspire of that the appellant ignored the legal representative, and filed an appeal against Lakhpat, who it knew dead. The question arises : whether it was a case of misdescription of the respondent as contended on behalf of the appellant ,or whether it was an appeal against non-existent person. If it is the former, then an amendment may be allowed as that would facilitate the determination of the question in controversy between the parties. But, if it is the latter, the appeal would be a nullity and amendment would not cure it. It may then be a case of filing the appeal against the legal representatives on the date when the amendment is made.

(6) In the case decided by the Bench of this court (Hardayal Hardy and T. V. R. Tatachari JJ.) Union of India v. Harpal and others (CMs 372 and 373 of 1969 in Rfa 617 of 1969, decided on November 7, 1969), two of the respondents died during the pendency of the reference. Their legal representatives had been brought on record as in the present case, in the court of the Additional District Judge, but because of the mention of the names of the deceased in the memo of parties in the certified copy of the judgment and award appealed against, a similar mistake occurred and the names of the deceased instead of their legal representatives, were mentioned in the array of respondents in the appeal. The Bench held that the appellant Union of India could not be said to have been misled by the said recital in the judgment. It was of the opinion that the application for bringing the legal representatives on record was hopelessly barred by time. The same was, Therefore, dismissed. The Bench noticed several decisions and relied upon Kartar Singh v. Chetan Singh. 1969 Plr 965. decided by a Division Bench of the High Court of Punjab and Haryana, who held that "the application for impleading the legal representatives of the deceased plaintiff

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having bean made 16 days after the last date of filing the appeal, the appeal against the legal representatives of the deceased must be taken to have been filed on the date on which that application was made." In that case the deceased and not his legal representatives, had been shown as respondent. As no cause was shown for the delay in filing the appeal against the legal representatives of the deceased. the appeal was held to be barred by the law of limitation and was dismissed. The Bench in Harpal''s case also .noticed the case of Adusumilli Gopalakrishnayya and Another Vs. Adivi Lakshmana Rao, , where the Full Bench of the Madras High Court held that if an appeal was presented against a person who was dead at the date of the presentation, the court may u/s 152 permit the cause title to be amended or may return the appeal memorandum for amendment, the court will, if the appeal was out of time against the legal representatives, have to excuse the delay in presentation before it can proceed to .hear the appellant. It was within the court''s decision whether it should excuse the delay in the presentation of the appeal.

(7) The condensation of delay was thus not considered to be a matter of course. The date of amendment was considered to be a date of presentation; showing that it was treated not as a case of misdescription; but that of an appeal against a non-existent person, whom the appeal was originally filed.

(8) In Union of India v. Tekan and others(CMs 187 and 188 of 1969 in Rfa 344 of 1968, decided on February 3, 1970), the learned single Judge of this court (V. S. Deshpande.)J. took the view that the mention of the name of the deceased in the memo of parties was a case of misdescription and the correction of such a misdescription amount to addition of a defendant. Provisions of the Limitation Act were, Therefore, held not applicable. He relied upon the judgment of the Supreme Court in Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, and Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, . The facts in both the cases were entirely different. The former was the case of a plaintiff saying in a firm name who by an amendment prayed for substituting his own name in place of the said firm name. The court held that since the name in which the suit was originally instituted was merely a misdescription of the original plaintiff no question of limitation arose. The amendment was allowed. In the latter case, it was observed that whoever was entitled to be put had not been brought on record under Order 22 Rule 10 of the CPC in a pending suit or proceeding would be entitled to prefer an appeal against the decree or order passed therein if his assignor could have filed such an appeal. The learned single Judge applied section 146 of the CPC to that case before him and held that there was no limitation for bringing the legal representatives of the deceased on record and the application was allowed. But the question of applying section 146, Code of Civil Procedure, does not arise in this case. If the name of the Respondent 1n the appeal originally filed is a misdescription, it can be amended. But. if the appeal is a nullity as appears to be the case here, then the appeal would be deemed to be filed only on the date of the amendment is made.

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(9) It may be noticed that under Article 120 of the Limitation Act, 1963 (equivalent to Articles 176 and 177 of the Limitation Act 1908), the period prescribed is 90 days from the date of the death of the plaintiff or appellant, defendant or respondent. as the case may be, for all applications under the Code of Civil

(10) Procedure, 1908 for having the legal representatives of a deceased plaintiff or appellant or of a deceased defendant or respondent made a party. The provisions does not appear to be restricted to application under Order 22 of the Code of Civil Procedure, but it is not necessary to go into this question. In any case. the judgment of the Division Bench in Harpal''s case was not brought to the notice of the learned single Judge. We are, however, in respected agreement with the views expressed in Harpal''s case to the effect that when the legal representatives of a deceased respondent are imp leaded in an appeal, the delay cannot be condoned as a matter of course. It has to be satisfactorily explained. And the circumstances, as in the present case, provide no grounds for excusing the delay in filing the applications under consideration.

(11) In the present case, the Union of India knew about the death of Lakhpat and in fact had been fighting the litigation with his legal representatives, who were brought on record after notice to it. A mere omission of the names of the legal representatives in the certified copies of the judgment and award appealed against cannot be treated as sufficient excuse for the appellant to ignore the legal representatives against whom it had been fighting the reference in the court of the Additional District Judge. There is no question of the appellant having been misled by a wrong recital in the title of the case in the certified copies.

(12) Under these circumstances, it was not a case of misdescription of the respondent. It was a case of an appeal against a nonexistent person, which was, Therefore, a nullity. If the amendment is to be taken as a fresh appeal on the date of the amendment, the appeal is barred by time and liable to be dismissed. The amendment would, Therefore, be futile; and the Court would not grant a futile amendment.

(13) The applications, under these circumstances, are misconceived and are dismissed with costs. Counsel''s fee Rs. 100.00.

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