

(2002) 11 DEL CK 0010

In the Delhi High Court

Case No : I.A. No. 9476 of 2001 in Suit No. 2809/99

Yogesh Prasad Soti

APPELLANT

Vs

Ram Narayan @ Balti Baba

RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 22 Rule 9
Limitation Act, 1963 — Section 5
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 102 DLT 669 : (2003) 67 DRJ 7 : (2003) 134 PLR 29 : (2003) 3 RCR(Civil) 422

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : Md. Safdar Imam, for the Appellant; Suresh Sharma, for the Respondent

Final Decision : Allowed

Judgement

C.K. Mahajan, J.—This is an application u/s 5 of the Limitation Act for condensation of delay in filing the application under Order 22 Rule 4 CPC.

2. Briefly the facts are that the defendant died on 9.4.2000 which came to the knowledge of plaintiff on 11.7.2000 during the course of hearing of a complaint u/s 138 of the Negotiable Instruments Act.

3. It is stated that the earlier counsel of the plaintiff did not take timely steps for impleading the legal representative of the defendant. It was only in October 2000 that the plaintiff was asked by his earlier counsel to sign two applications, one u/s 5 of the Limitation Act and the other under Order 22 Rule 4 CPC for bringing on record the legal representative of the defendant. The said applications were got attested on 3.11.2000 and were stated to have been filed on 6.11.2000 vide diary No. 76832 as would be seen from Annexure P-3 to the present application. However, as the same had been stated to be misplaced by the registry, the same were again filed on 19.1.2001. On 26.9.2001, these two applications were

withdrawn by the plaintiff on the ground that the same had not been properly drafted and contained incorrect statement of facts. It is also stated that the earlier counsel did not take interest in the case. The plaintiff also reminded the earlier counsel to take steps in this regard. Furthermore, the brother of the plaintiff was also hospitalised since 16.9.2001 and Therefore also the plaintiff could not pursue the matter vigorously with his earlier counsel. It is further stated that the delay in filing the application was also because when the plaintiff heard about the death of the defendant, he wanted to verify the same since the defendant was a tantric and was capable of faking his own death and tendering a death certificate in support thereof and escape his liability.

4. It is further submitted that delay in filing the application is neither deliberate nor intentional but due to the aforesaid reasons.

5. The application is opposed by the legal representative of the defendant. It is stated that the plaintiff was aware of the death of the defendant, initially on 9.4.2002 and then on 11.7.2002 in a proceeding u/s 138 of the Negotiable Instruments Act. It is also stated that even if the applications were filed on 6.11.2000, the same are time barred from the date of knowledge of the death of the deceased. The period of 90 days expired on 10.10.2000.

6. Learned counsel for the defendant places reliance on a judgment of the Supreme Court in Union of India (UOI) Vs. Ram Charan and Others, wherein it was held as under:-

"There is no question of construing the expression "sufficient cause" liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice.....This, however, does not mean that the Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinise it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement. It is true that it is no duty of the appellant to make regular enquiries from time to time about the health or existence of the respondent but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself justify his application for setting aside the abatement. That is not the law. Rule 9 of Order XXII of the Code requires the plaintiff to prove that he was prevented by any sufficient cause from continuing the suit. The mere allegation about his not coming to know of the death of the opposite party is not sufficient. He had to state reasons which, according to him, led to his not knowing of the death of the defendant within reasonable time and to establish those reasons to the satisfaction of the Court, specially when challenged by the legal representatives of the deceased who have secured a valuable right on the abatement of the suit....."

7. I have heard learned counsel for the parties and also perused the documents placed on record.

8. An application for bringing the legal heirs of a deceased on record is to be made within 90 days from the date of death of the deceased or from the date of knowledge of death of the deceased. In the present case, the defendant No.1 died on 9.4.2000 which came to the plaintiff's knowledge on 11.7.2000. His earlier counsel got the applications signed from him on 30.10.2000 which were stated to have been filed on 6.11.2000 and lost by the registry. The same applications were again filed in January 2001 but were subsequently withdrawn in September 2001 due to incorrectness of facts in the said applications.

9. It is settled law that to obtain extension of time by invoking the provisions of Section 5 of the Limitation Act, the party seeking extension has to satisfy the Court that there is sufficient cause for not approaching the Court within the prescribed time. Section 5 gives the Court a discretion which is to be exercised upon established principles.

10. A plethora of decisions lay down that the expression "sufficient cause" is to be liberally constructed so as to advance substantial justice when no negligence or inaction or bonafides is imputable to the parties. It is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves the ends of Justice. It does not mean that every cause pleaded by the party has to be accepted where the party is negligent and has slept over its right for over a year. The Court must not exercise discretion in such cases.

11. In Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , their lordships of the Supreme Court have held that a justice-oriented approach has to be adopted while dealing with an application u/s 5 of the Limitation Act and that "every day's delay must be explained" does not mean that technical approach should be made.

12. Negligence of counsel may be accepted by the Court as a justification in extending time unless the error of the counsel was tainted by any mala fide motive though the mistake of counsel cannot be treated as sufficient ground to condone delay by way of a rule of universal application. It is all a question of determining the bona fides of the litigant.

13. Admittedly, the plaintiff filed the initial application on 6.11.2000, i.e., after a delay of about 27 days. The application was lost by the Registry. It was re-filed in January, 2001. There was in fact delay on the part of the earlier counsel of the plaintiff in filing the application under Order 22 Rule 4 CPC and the plaintiff cannot be made to suffer on account of the mistake of his counsel. Moreover, this is a suit under Order xxxvII for the recovery of the amount which was taken by the defendant from the plaintiff by way of cheque.

14. The applicant has been able to make out sufficient cause for condensation of delay in filing the application under Order 22 Rule 4 CPC. Equities are also in

favor of the applicant. The Explanation offered is cogent. The negligence, if any, was on the part of the earlier counsel in not filing the application on time. The applicant was diligent and has disclosed sufficient cause to warrant exercise of discretion by this Court.

15. In these circumstances, it would be appropriate and in the interest of justice if the present application is allowed, however, subject to payment of costs.

16. Accordingly, the present application is allowed subject to payment of Rs. 5,000/- as costs.

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Let the application be numbered.

17. By way of this application, the plaintiff seeks to substitute the legal representative of the deceased defendant.

18. In reply, the proposed legal representative states that the application is time barred. However, it has not been denied that he is the only legal representative of the deceased defendant.

19. I have heard learned counsel for the parties.

20. In view of the application for condensation of delay having been allowed, the present application is also allowed. The proposed legal representative of the deceased defendant as mentioned in para 3 of the application be substituted in place of the defendant.

Application stands disposed of.

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21. Amended memo of parties be filed within four weeks.

22. plaintiff is also directed to take steps for filing appropriate application for issuance of summons for judgment.

List on 18th December 2002.