

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 2034/2008

Date of Decision: 20th March, 2008

RAJENDRA DORIAN PUNJ Petitioner
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Through: Mr. Harish Malhotra, Senior Advocate
with Mr. Anupam Sharma, Adv.

versus

\$ I.F.C.I. & ORS. Respondent
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Through: Mr. Atul Sharma, Adv. for IFCI.

% **CORAM:**
HON'BLE MR. JUSTICE T. S. THAKUR
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? **Not necessary.**
2. To be referred to the Reporter or not? **Not necessary.**
3. Whether the judgment should be reported in the Digest? **Not necessary.**

J U D G M E N T

Per Thakur, J(oral)

This Writ Petition arises out of an order passed by the Debt Recovery Tribunal (DRT) substituting the LRs of the deceased, Sh. V. P. Punj-defendant no.2 in OA No. 16/2003 and an order passed by the Debt Recovery Appellate Tribunal (DRAT) dismissing the appeal against the said order. The controversy arises in the following circumstances:

2. OA No. 16/2003 was filed before the DRT, Delhi by the respondent-IFCI for the recovery of a sum of Rs.55.12 crores. Among others,

deceased defendant no.2 was represented in the said OM by M/s U. K. Chaudhary and Associates. A perusal of the interim orders passed by the Tribunal, copies whereof have been filed by the Petitioner, shows that deceased-defendant no.2 was represented by his counsel till as late as 05.10.2006. On 08.10.2006, Sh. Punj passed away, whereupon the plaintiff, respondent/Bank appears to have filed IA No. 139/2007 seeking substitution of the LRs of the deceased Sh. Punj. The Tribunal examined the said IA and allowed the prayer for substitution without issuing any notice to the proposed LRs, one of whom is the Petitioner in the present Writ Petition. Aggrieved by the said order the Petitioner preferred Miscellaneous Appeal No. 6/2008 before the DRAT, Delhi to *inter alia* argue that the Tribunal had committed a mistake in not issuing notice to proposed LRs and also that the suit had, on account of the failure of the plaintiff to substitute the LRs of Sh. Punj, abated. It was also contended that the application for substitution filed by the plaintiff, respondent herein was beyond the period of limitation prescribed for the same. By its order dated 26.02.2008, the Appellate Tribunal has dismissed the said appeal and upheld the order of substitution passed by the DRT. The present Writ Petition, as already noticed above, assails the correctness of the said two orders.

3. We have heard learned counsel for the parties at some length and perused the record. The material facts are not in dispute before us. It is not in dispute that Sh. Punj had engaged a counsel and was represented in the proceedings before the DRT till as late as 05.10.2006. It is also not in dispute that Sh. Punj passed away on 08.10.2006 but the counsel

appearing on his behalf had not reported the said event to the Tribunal at any point of time. An application for substitution of the LR's was filed by the counsel for plaintiff-respondent on 09.04.2007. The application *inter alia* stated that the plaintiff-respondent had come to know about the death of Sh. Punj in the connected proceedings in which the counsel appearing on his behalf had informed the counsel for the plaintiff about that development. The Tribunal had taken note of these facts and allowed the substitution, bringing on record the only two legal representatives left behind by Sh. Punj. It was in the above background argued by Mr. Malhotra, Senior Advocate for the Petitioner that the Tribunal committed an error of law and procedure both. Firstly, it should have but did not issue any notice to the proposed LR's of the application filed for the substitution and secondly, the Tribunal ought to have first set aside the abatement before directing the substitution of the LR's. Mr. Malhotra, however, fairly conceded that the Petitioner and his sister-respondent no.3 of this petition were the only two legal representatives left behind by Sh. Punj. It is also not in dispute that the Appellate Tribunal had made it clear that the substitution of the petitioner and his sister would limit their liability to the extent of the estate of the deceased in their hands. Such being the position, the only question is – "whether the failure of the Tribunal to issue a notice to the proposed LR's vitiates the order passed by it?" Our answer to that question is in negative. It is true that, in the ordinary course, any Court or Tribunal, dealing with an application for substitution of LR's ought to issue a notice to proposed LR's and hear them before passing an order of substitution, but the very fact that such

a notice was not given does not in the peculiar facts and circumstances of the present case, make any material difference. So long as, petitioner and his sister do not allege that there are any other LR's who were required to be brought on record and so long as they do not deny their relationship with the deceased or the fact of his estate having fallen in their hands, the non-issue of a notice makes little difference.

4. The alternative submission of Mr. Malhotra, that the substitution ought to have been preceded by an order of setting aside of abatement and that absence of such an order vitiated the substitution itself has not impressed us. It is correct to say that the failure of the plaintiff to substitute the LR's of the deceased in a case where the cause of action survives against them results in the abatement of the suit against the deceased and his LR's. But the very fact that an order of substitution is made without a formal direction regarding setting aside of such abatement will not necessarily constitute an irregularity of a kind that would prove fatal to the substitution order. On the contrary, we are of the view that once the Court directs substitution, on being satisfied that the application is within time, the absence of a formal order directing setting aside of abatement would not invalidate the order of substitution. The order of substitution must in itself be deemed to be setting aside the abatement if any.

5. The factual position, in the present case, is that the deceased was represented all through in the proceedings and at no stages was a statement made by his counsel before the Tribunal about his death. This was necessary if Order 22 of the CPC, upon which reliance was placed

by Mr. Malhotra was applicable. Order 22 Rule 10A is in this regard relevant. It reads:

“10A. Duty of pleader to communicate to Court death of a party.– Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”

6. The Pleader for the deceased having failed in his duty to report the death of his client, it is not open to the LRs left behind by the deceased to contend that even when they had failed or the counsel appearing for the deceased had failed in his professional and legal obligation, the party who was to file an application for substitution should suffer. So also the fact that the plaintiff-respondent had based on some information given to it in some other proceedings, filed an application for substitution, even without an intimation in terms of Rule 10A above does not make its position worse. The essence of the matter is, that from the date the counsel for the deceased party had reported the event of death to the Tribunal, an application for substitution was made within a reasonable time which the Debt Recovery Tribunal as also Debt Recovery Appellate Tribunal have considered and granted. There is no illegality or material irregularity in the proceedings causing miscarriage of justice to warrant

our interference. The Writ petition has no merit and is hereby dismissed with costs of Rs.5000/-(rupees five thousand).

T. S. THAKUR, J.

MARCH 20, 2008
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SIDDHARTH MRIDUL, J.