

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

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CS(OS) No. 764/2006

27th August, 2015

MR. SAIFUDDIN CHOUDHARY

..... Plaintiff

Through: Ms. Indira Unninayar, Advocate with
Mr. Narayan Krishan, Advocate

versus

BARTAMAN LIMITED AND ANR.

..... Defendants

Through: Mr. Vikas Sharma, Advocate with
Mr. Hunny Veer Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

CS(OS) No. 764/2006, I.A. No.148/2015 and I.A. No.12314/2015

1. This suit is a suit for defamation filed by one Mr. Saifuddin Choudhary against two defendants. Defendant no.1 is the company which owns the newspaper "Bartaman" which is alleged to have published a defamatory article. Defendant no.2 is the Editor of the newspaper published by the defendant no.1. By this suit plaintiff claims damages of Rs.20 lacs.

2. In this suit, evidence of both the parties was complete when unfortunately the plaintiff expired on 14.09.2014. The issue before this Court is that whether on the death of a plaintiff in a suit for recovery of damages alleged to have been caused on account of defamation, the suit survives i.e whether the right to sue survives and the legal heirs can be brought on record and can they continue the suit for damages filed by the erstwhile plaintiff.

3. I need not labour on this aspect since the issue is fully covered by the ratio of the judgment of the Supreme Court in the case of *Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair, (1986) 1 SCC 118*. In this judgment the Supreme Court has decided that the suits which are filed for defamation can be divided in two categories. In the first category are those class of suits where in the suits no decree has been passed decreeing the suit for damages. The second class is of suits where decree of damages is passed but the other side/defendant against whom the decree has been passed has gone up in appeal. The Supreme Court has held in the first class where in suits no decree has been passed, the right to sue does not survive and the suit abates in view of Section 306 of the Indian Succession Act, 1925. In the second class where a decree of damages is passed, the

Supreme Court has observed that the decree becomes part of the estate of the deceased plaintiff and therefore death of the plaintiff during the pendency of an appeal filed by the defendant against whom the suit is decreed will not result in abatement. The relevant paras of this judgment are paras 6 to 9 and these paras read as under:-

“6. So far as this country is concerned, which causes of action survive and which abate is laid down in Section 306 of the Indian Succession Act, 1925, which provides as follows:

“306. Demands and rights of action of or against deceased survive to and against executor or administrator.— All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defalcation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

Section 306 speaks of an action and not of an appeal. Reading Section 306 along with Rules 1 and 11 of Order XXII of the CPC, 1906, it is, however, clear that a cause of action for defamation does not survive the death of the appellant.

7. Where a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking to enforce in the appeal is his right to sue for damages for defamation and as this right does not survive his death, his legal representative has no right to be brought on the record of the appeal in his place and stead if the appellant dies during the pendency of the appeal. The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged in the decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a

question of benefit or detriment to the estate of the plaintiff-respondent which his legal representatives is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent-plaintiff.

8. Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.

9. The position, therefore, is that had the Appellant died during the pendency of his suit, the suit would have abated. Had he died during the pendency of the appeal filed by him in the District Court, the appeal would have equally abated because his suit had been dismissed by the Trial Court, had he, however, died during the pendency of the second appeal filed by the respondent in the High Court, the appeal would not have abated because he had succeeded in the first appeal and his suit had been decreed. As, however, the High Court allowed the second appeal and dismissed the suit, the present Appeal by Special Leave must abate because what the Appellant was seeking in this Appeal was to enforce his right to sue for damages for defamation. This right did not survive his death and accordingly the Appeal abated automatically on his death and his legal representatives acquired no right in law to be brought on the record in his place and stead.” (underlining added)

4. The first line of para 9 of the Supreme Court judgment in *Melepurath Sankunni Ezhuthassan's* case (*supra*) leaves no manner of doubt on the issue inasmuch as it is clearly held in this line that where a plaintiff dies during the pendency of a suit, the suit will stand abated.

5. Learned counsel for the legal heirs of the plaintiff did valiantly make an attempt to distinguish the judgment of the Supreme Court in the *CS(OS) No. 764/2006*

case of *Melepurath Sankunni Ezhuthassan (supra)* on the ground that the present suit has continued for a long period of time and delay in disposal of the suit should not result in an act of the court causing prejudice, however, in my opinion, these arguments cannot be raised in view of the categorical ratio of the judgment of the Supreme Court in *Melepurath Sankunni Ezhuthassan's case (supra)*.

6. In view of the above, the suit is dismissed, inasmuch as, on the death of the plaintiff in this suit for defamation and which suit under the law of tort, the right to sue does not survive. I.A for bringing on record the legal heirs of the deceased plaintiff is hence dismissed and all the other pending applications also stand dismissed. Parties are left to bear their own costs.

AUGUST 27, 2015
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VALMIKI J. MEHTA, J.