

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No.186 of 2003**

Smt. Pavitri Kashyap, W/o Shri Shyamkashyap, aged about 45 years, R/o Near Joda Pipal, Ambikapur, District Surguja (CG). **---- Appellant**

Versus

Janpad Panchayat, Ambikapur, through the Chief Executive Officer, Janpad Panchayat, Ambikapur, District Surguja (CG). **--- Respondent**

For Appellant : Shri Shakti Raj Sinha, Advocate
For Respondent : Shri Alok Bakshi, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

17/10/2016

(1) Heard.

(2) Plaintiffs-Smt. Dulari Devi and five others filed Civil Suit No.14-A/1999 before the trial Court. During the pendency of the suit, Smt. Dulari Bai died on 15.09.1997. On 16.12.1998, the appellant herein being her daughter filed an application under Order XXII Rule 3 of CPC for substitution of her name in place of the original plaintiff Smt. Dulari Devi. The said application was rejected by the trial Court on 30.03.2000 holding that the application has not been filed within the period of limitation. Since the suit filed by the Plaintiff was abated, the appellant again filed an application under Order XXII Rule 9 of CPC for setting aside the abatement along with the application for condonation of delay under Section 5 of the Limitation Act, but the said application was also rejected by the trial Court vide order dated 12.05.2000. Thereafter, the said order dated 12.5.2000 was challenged before the M.P.High Court in M.A. No. 1462 of 2000 and the High Court has set aside the order of the trial Court vide its order dated 28.07.2000 with a direction to the trial Court to decide the applications

under Order 22 Rule 3 and Order XXII Rule 9 of CPC and also the application under Section 5 of the Limitation Act after giving parties due opportunity of hearing afresh.

(3) However, the trial Court vide impugned order dated 13.11.2002 again rejected those applications on the ground that the main civil suit filed by the sole appellant-plaintiff has already been dismissed on the merit and there is no explanation of delay in filing the applications. Against which, this appeal under Order XLIII Rule 1(K) of CPC has been filed by the appellant.

(4) Learned counsel appearing for the appellant would submit that the trial Court is absolutely unjustified in rejecting the applications particularly in view of the order of M.P. High Court where the High Court has held that the appellant is the legal representatives of the deceased Smt. Dulari Bai. He would further submit that the provisions of Order XXII of CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In support of his submissions, the Counsel has relied upon the decision of the Supreme Court rendered in the case of **Banwari Lal & Others Vs. Balbir Singh**¹.

(5) On the other hand, learned counsel appearing for the respondent would support the impugned order.

(6) I have heard learned counsel for the parties and considered their rival submissions made herein and gone through the record with utmost circumspection.

(7) Smt. Dulari Bai-plaintiff died on 15.09.1997 and the applications under Order XXII Rule 3 was filed on 16.12.1998 and that was rejected on

¹ 2016 (1) SCC 607

30.03.2000 and thereafter, application under Order XXII Rule 9 of CPC was filed on 25.04.2000 and the same was also rejected by the trial Court on 12.05.2000 and that was set aside by this Court on 28.7.2000 in M.A. No. 1462 of 2000 directing the trial Court to decide the said applications and pass fresh orders in accordance with law after giving due opportunities to the parties.

(8) In the matter of **Banwarilal (supra)**, their Lordships have held that provision of Order XXII of the CPC is not penal in nature. The relevant paragraphs of report states as under :

"10. Provisions of Order XXII Code of Civil Procedure are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In *Sardar Amarjit Singh Kalra v. Pramod Gupta* Manu/SC/1214/2002:(2003) 3 SCC 272, a Five Judge Bench of this Court held as under :

26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to the provisions contained in Order 22 Code of Civil Procedure as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions

contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the *khata* was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even de hors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining Appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice.....

11. In *Sital Prasad Sexena (D) by L.Rs. v. Union of India and Ors.* Manu/SC/0294/1984: (1985) 1 SCC 163, it was observed that the rules of procedure under Order XXII Code of Civil Procedure are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not

constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained."

(9) In view of the principle laid down by their Lordships of Supreme Court in **Banwari Lal** (supra) and keeping in view that fact that the appellant-Smt. Dulari Devi died on 15.07.1997 and appellant herein filed an application on 16.12.1998 for substitution of her name in place of the original plaintiff Smt. Dulari Devi, who died during pendency of the suit and after hearing learned counsel appearing for the parties and in view of the provisions contained in Order XXII of CPC, I am of the considered opinion that the sole appellant has shown sufficient cause for not filing the said applications right in time and as such, trial Court has committed legal error in rejecting the applications. Consequently, the application under Section 5 of the Limitation Act is allowed and delay in filing the application is hereby condoned and setting aside abatement under Order XXII Rule 9 of the CPC, the application for substitution of the appellant is allowed. Consequently, impugned order is set-aside and abatement of suit is set-aside. The matter is remanded to the trial Court. Legal representative of the plaintiff-Smt. Dulari Devi be brought on record within 30 days from the date of appearance before the trial Court. Parties are directed to appear before the trial Court on 28.11.2016. The trial Court is directed to conclude the hearing of suit within a period of three months from 28.11.2016. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

L/-