

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.137 of 2016

Order reserved on: 24-11-2016

Order delivered on: 2-12-2016

Maluram Singhania, S/o Prabhulal Singhania, aged about 70 years, R/o Village Khamharia, P.S. & P.O. Khamharia, Tahsil Bemetara, Civil & Revenue District Durg, C.G., through general power of attorney Virendra Singhania, S/o Maluram Singhania, aged about 54 years, R/o Vindhyavasini Kutir, Tatyapara Chauk, Raipur, P.S. & P.O. Raipur, District Raipur, C.G.

---- Applicant

Versus

1. Girdhar, S/o late Mohanlal, aged about 54 years,

2. Anandram, S/o late Mohanlal, aged about 51 years,

No. 1 & 2 R/o Village Parasbod, P.S. & P.O. Saja, Tahsil Saja, Civil & Revenue District Durg, C.G.

◆ Mohanlal, S/o Ramlal (Since Died)

◆ Ghasiram, S/o late Jagtu Lodhi (Since Died)

3. Sevaram, S/o late Ghasiram, aged about 70 years,

4. Leelaram, S/o late Ghasiram, aged about 65 years,

Both respondent No.3 and 4 are R/o Village Gharsbod, P.S. and Post Saja, Tehsil Saja, District Durg (C.G.)

◆ Seth Mangilal, S/o Unknown (Since Died)

5. Ravatmal Jain, S/o late Mangilal, aged about 72 years, R/o Nagpura, Durg, P.S. & P.O. Durg, Civil & Revenue District Durg, C.G.

6. Pukhraj Jain, S/o late Mangilal, aged about 64 years, R/o Saja, P.S. & P.O. Saja, Tahsil Saja, Civil & Revenue District Bemetara, C.G.

◆ Sanwaldas, S/o Heeralal (Since Dead)

7. Gangadas, S/o Sanwaldas, aged about 50 years, R/o Village Parasbod, P.S., P.O. & Tahsil Saja, Civil & Revenue District Durg, C.G.
8. State of Chhattisgarh, through Collector Durg, P.S. & P.O. Durg, Civil & Revenue District Durg, C.G.

---- Respondents

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| For Petitioner:                   | Mr. Manoj Paranjpe, Advocate.   |
| For Respondents No.1, 2, 5 and 6: | Mr. P.P. Sahu, Advocate.        |
| For State/Respondent No.8:        | Mr. Asish Surana, Panel Lawyer. |

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Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner is plaintiff before the trial Court. Suit filed for declaration and injunction with regard to suit land was dismissed on merits on 11-9-1995. Feeling dissatisfied and aggrieved against the judgment and decree dismissing the suit, the petitioner / plaintiff preferred an appeal under Section 96 of the CPC on 16-2-1996 which came to be dismissed for want of prosecution on 18-6-2003 and in order to get the appeal restored, he preferred an application under Order 41 Rule 19 of the CPC assigning the cause for his non-appearance when the case was called-up for hearing, on the next day itself, but in the meanwhile, defendants No.2 and 4 died and he preferred an application for substitution under Order 22 Rule 4 of the CPC which was rejected by the impugned order and thereby also consequently, the application under Order 41 Rule 19 of the CPC was rejected. Questioning legality and validity of the order rejecting

application under Order 41 Rule 19 of the CPC, the petitioner / plaintiff has preferred this revision under Section 115 of the CPC.

2. Mr. Manoj Paranjpe, learned counsel appearing for the petitioner / plaintiff would submit that the provisions contained in Order 22 Rule 4 of the CPC are not applicable in the instant case i.e. proceedings like Order 41 Rule 19 of the CPC and therefore the first appellate Court is absolutely unjustified in dismissing the application under Order 41 Rule 19 of the CPC as abated and consequently, the impugned order deserves to be set aside. He placed heavy reliance upon a Division Bench's decision of the M.P. High Court in the matter of Sayeeda Begam and another v. Ashraf Hussain Anwar Hussain and others<sup>1</sup> followed by that Court in the matter of Shikhar Chandra Jain (since dead) through L.Rs. Anil Kumar Jain and others v. State of M.P. and others<sup>2</sup>.

3. On the other hand, Mr. P.P. Sahu, learned counsel appearing for respondents No.1, 2, 5 and 6, would submit that against the order rejecting application under Order 41 Rule 19 of the CPC, appeal under Order 43 Rule 1(t) of the CPC would lie, as such, the revision is not maintainable. He would further submits that Order 41 Rule 19 of the CPC includes Order 9

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1 1980 M.P.L.J. 46 : AIR 1980 MP 12

2 2004(4) M.P.H.T. 402

therefore, Order 22 is applicable in the miscellaneous proceeding including while considering application under Order 41 Rule 19 of the CPC and placed reliance in the matter of **Mst. Nurnahar Bewa and Anr. v. Rabindra Nath Dev and Ors.**<sup>3</sup> and **Puran Singh and others v. State of Punjab and others**<sup>4</sup> to buttress his submission.

4. I have heard learned counsel for the parties and given thoughtful consideration to the contentions made therein and also gone through the record with utmost circumspection.
5. In **Sayeeda Begam** (supra), the question referred to the Division Bench for answer was, whether the provisions of Order 22 read with Section 141 of the CPC would apply to proceeding initiated under Order 9, for restoration, of a suit dismissed in default, and there was cleavage of opinion.
6. The Division Bench of the M.P. High Court considered the question so posed threadbare with reference to Section 141 of the CPC and Article 120 of the Limitation Act and held that said Article of the Limitation Act, which provides limitation for substitution of legal representatives of plaintiff or defendant, cannot be applied for substitution in order of proceeding and application for substitution in such a case would be governed by residuary Article; there being no special provision. It was succinctly held as under: -

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3 AIR 1988 Cal 358

4 AIR 1996 SC 1092

"7. Order 22 contains penal provisions which affect substantive rights of the plaintiff or the appellant, as the case may be, when an application for substitution is not filed within time. The penal provisions have to be construed strictly. Unless they expressly declare the provisions to be applicable to a proceeding other than a suit or appeal, those provisions cannot be applied by analogy to such a proceeding.

8. There are two weighty reasons given by Abdur Rahman, Ag. C.J. in the Mohd. Sadaat Ali Khan v. Administrator, Corporation of City of Lahore, AIR 1949 Lah 186 (FB) for holding that the provisions of Order 22, Rule 3. C.P.C. are not applicable to revisions. (Please see paras 9 to 13 of the Judgment). There is nothing to, choose between a revision and a Miscellaneous Judicial case, which is not a suit or appeal, to make any distinction in the applicability of [Article 120 of the Limitation Act](#). If the said Article does not apply to a revision, it does not apply to an application for restoration either. To the same effect are the Full Bench Authorities reported in [Babulal v. Mannilal](#), AIR 1953 Raj 169 and [Chandradeo Pandey v. Sukhdeo Rai](#), AIR 1972 All 504 (FB).

9. Naturally a proceeding on the death of a party cannot proceed and those to whom the right to sue survives have to be impleaded. But the limitation to make an application for substitution in a suit for which there is express provision, would not govern a proceeding which is neither a suit nor an appeal. That being so, Order 22 would not in terms apply to a proceeding initiated under Order 9 for restoration of a suit dismissed in default."

7. Thus, the Division Bench has clearly held that Order 22 of the CPC would not in terms apply to proceeding initiated under Order 9 of the CPC for restoration of suit dismissed for default, but persons to whom the right to sue survives have to be impleaded and same would apply to restoration of appeals under Order 41 Rule 19 of the CPC. Therefore, in the case

in hand, rejection of application under Order 41 Rule 19 of the CPC for restoration of appeal as abated by the trial Court, is absolutely unjustified and it is hereby set-aside and the revision is allowed in part. The judgments relied upon by the learned counsel for respondents are clearly not applicable to the facts of the present case.

8. Consequently, the application for restoration filed under Order 41 Rule 19 of the CPC is allowed and the appeal is hereby restored to its original number for hearing and disposal in accordance with law. However, the appellate Court will permit the appellant therein to bring the LRs of the respondents on record within fifteen days from today.
9. No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge