

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.4007 OF 2016

ORDER:

Plaintiffs in O.S.No.48 of 2015 on the file of VIII Additional District Judge, Nizamabad, having been unsuccessful in I.A.No.1585 of 2015 filed by them seeking to bring on record the legal representatives of deceased defendant No.16, whose death occurred prior to the presentation of the plaint, preferred the present revision petition assailing the dismissal order, dated 07.04.2016, passed in the said I.A.

2. Heard Sri B. Raju, learned counsel assisting Sri T.V. Kalyaan Singh, learned counsel for the revision petitioners.

3. The question involved in I.A.No.1585 of 2015 was whether the petitioners - plaintiffs were competent to make an application under Order XXII Rule 4 read with Section 151 C.P.C. to bring on record the legal representatives of deceased defendant No.16, whose death occurred prior to the institution of the Suit i.e., on 27.06.2012. The Court below, on the premise, that such a course is not open to the petitioners in invoking the provisions under Order XXII C.P.C. when the death of defendant No.16 did occur two years prior to filing of the Suit, dismissed the petition as not maintainable.

4. Learned counsel for petitioners would submit that there would not be any prejudice to the rights of the defendants in allowing

the application, more particularly, placing reliance on the ruling in **Karam Kaur v. Dalip Singh**¹ rendered by a learned single Judge of the Honourable High Court of Punjab and Haryana on 01.11.2000, placing reliance on a decision of the Division Bench of Mysore High Court in **C. Muttu v. Bharth Match Works, Sivakasi**², to the effect that, in case, there is sole defendant, whose death occurred earlier to the presentation of the plaint, the Court has no jurisdiction to grant an application under Order I Rule 10 or under Order XXII Rules 4 and 9 C.P.C. or do any other act authorised by C.P.C., as the Suit filed against a dead person is a nullity, but, however, in case, there are more defendants than one and one of them was dead when the Suit was filed, the legal representatives of the deceased defendant can be brought on record, subject to any question of limitation that may be raised by the legal representatives of the deceased person, who were brought on record as the Suit had been validly presented in so far as the living defendants are concerned.

5. When the said proposition is applied to the fact situation occurring in the instant case, certainly, the order passed by the Court below is liable to be set aside and accordingly, the same is set aside with a direction to issue notice in I.A.No.1585 of 2015 to the legal representatives of the deceased defendant No.16 and also to examine the limitation aspect.

¹ LAWS(P & H)-2000-11-93

² AIR 1964 Mys. 293

6. Accordingly, the revision petition is allowed. Miscellaneous Petitions, if any, pending in this revision petition, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 16, 2016.
MD

