

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR No. 8074 of 2016(O&M)

Date of decision :01.12.2016

Shiv Singh @ Shiba and another

.....Petitioners

Versus

Balwinder Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.M.S.Virdi, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been moved against the order dated 10.11.2016 passed by the learned Additional District Judge, Amritsar, whereby the application moved by the petitioner for dismissal of the appeal having been filed against dead person has been dismissed and the application moved by respondents under Order 22 Rule 3 and 4 of the Code of Civil Procedure, 1908 (for short CPC) for impleading the legal representatives of respondent no.1-Charanjit Kaur, has been allowed.

2. I have heard Mr. M.S.Virdi, Advocate, learned counsel for the petitioner and have carefully gone through the paper book.

3. Learned counsel for the petitioner contended that as per the provisions of Order 22 Rule 4(3) CPC, the appeal filed by the respondents was to abate as the same was filed against the dead person i.e. respondent no.1-Charanjit Kaur and her legal representatives were not impleaded within a period of 90 days from the date of her death. In-fact, she has died even during the pendency of the suit and this fact was known to the appellants,

but even than the appeal has been filed against the dead person.

4. I have duly considered the aforesaid contentions.

5. Petitioners no.1 and 2 are the sons of deceased-Charanjit Kaur.

The present appeal has been preferred by respondent no.1-Balwinder Singh against the judgment and decree dated 28.01.2015. The learned First Appellate Court has observed that the memo of parties in the civil suit is same as in the appeal and in the impugned judgment defendant no.1(Charanjit Kaur) has been mentioned as dead. Thus, the present appeal has been filed as per the memo of parties in the impugned judgment and decree.

6. This fact is not disputed that respondents no.2 to 4 are the sons and respondent no.5-Manjit Kaur is the daughter of deceased-Charanjit Kaur. So, the legal representatives of Charanjit Kaur were already on record to represent her estate. The learned First Appellate court has relied upon case **D.R.Somayajulu, Secretary DLS and others Vs. Attili Appala Swamy and others 2014(3) SCALE-1**, wherein the Hon'ble Apex Court has laid down that when the legal representatives of the deceased are already on record in their individual capacity, their fresh impleadment is not necessary. A mere note under Order 22 Rule 2 CPC is sufficient.

7. Moreover, this Court has inserted Rule 2B in Order 22 CPC, which reads as under:-

“2-B. The duty to bring on record the legal representatives of the deceased-defendant shall be of the heirs of the deceased and not of the person who is *dominus litis*.”

As per the aforesaid provisions of law, it was the duty of the legal heirs of deceased-Charanjit Kaur to bring on record her legal representatives. But, they have not complied with this rule, even though

they were party to the litigation in their individual capacity. Thus, they cannot claim the abatement of the appeal. Thus, the application moved by the petitioner for abatement of the appeal has been rightly dismissed and the application moved by appellant-respondent no.1 for bringing on record the legal representatives of deceased-Charanjit Kaur has been rightly allowed.

8. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

9. Thus, the present revision petition having no merits, is hereby dismissed.

01.12.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No