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HIGH COURT OF DELHI AT NEW DELHI

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FAO 334/2014

Decided on: 2nd March, 2016

V S VENUGOPALAN & ANR

..... Appellants

Through: Mr. J.R. Bajaj, Advocate

versus

M/S DENSITY & ORS

..... Respondents

Through: Mr. R. Vasudevan, Advocate for
R-5.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an appeal filed by the appellant against the order dated 06.08.2014 by virtue of which three applications of the appellants have been dismissed. These three applications were under Order 22 Rule 3; application under Section 5 of the Limitation Act and an application under Order 22 Rule 9 CPC for setting aside the abetment proceedings.
2. Before considering the legality of the impugned order, it may be pertinent here to give a brief background of the case. The deceased/appellant Col. Dr. A.G. Rangaraj filed a suit for recovery

of possession, mesne profits and permanent injunction against M/s. Density, Mr. Dinesh Chandra Pathak, Mr. Jagjit Singh Randbawa, M/s. Trinity Global, Mrs. Amita Rangaraj & Mr. Balbir Singh Bajaj through his brother-in-law and a Power of Attorney, named V.S. Venu Gopalan. Apart from claiming possession he had also claimed recoveries of certain money on account of use and occupation charges and also claimed damages/mesne profits @ Rs.1,81,650/- per month.

3. During the pendency of the suit, the plaintiff had died. However, no applications for substitution of LRs had been filed and the proceedings were treated to have abated. After the abatement of the proceedings, power of attorney holder V.S. Venu Gopalan, filed these three applications. The averments in the three applications are almost similar.
4. It has been stated in the applications that Col. A.G. Rangaraj passed away on 23.03.2009 at Bangkok, Thailand. The death certificate of the deceased was obtained on 27.03.2009. It is stated that the applicant came to know about the execution of the Will which was duly registered by the deceased Col. A.G. Rangaraj. He

also learnt about the fact that he, the attorney had been appointed as the executor of the Will as a consequence of which he visited the Advocate of the deceased Col. A.G. Rangaraj, namely, Shri N.N. Goel at Dehradun and collected the original Will. On the basis of these facts, it has been stated that the delay was caused and so far as the filing of application for substitution of the LRs is concerned, it is stated that the appellant in the capacity of attorney has every right, power and duty to prosecute the matter and therefore, the abatement proceedings be set aside and the appellant be permitted to prosecute the matter as he has right and power to do so. He has further stated that he has already obtained a probate on the basis of the Will and the only remaining thing to be done by him is the payment of duty and which will be done in due course and by virtue of the aforesaid Will a life interest has been created in favour of the widow of the deceased/testator and thereafter the property is to pass on to the appellant/applicant. It has also been stated that the only legal heir who survived the deceased/testator and the plaintiff was his widow, who is already respondent No.5 in the present appeal.

5. I have carefully considered the submission of the learned counsel for the appellant. I have also gone through the record including the impugned order as well as the averments made in the application.
6. Before an application is allowed, it must meet the requirement of the section under which it is filed. Application under Order 22 Rule 3 CPC lays down that if the plaintiff or one of the plaintiffs dies and the right to sue survives then the legal representatives of the deceased/plaintiff can be substituted in his place. But these averments have to be made in the application to satisfy the requirement of pleadings. In addition to this, the names, addresses and details of the other legal heirs have to be furnished in the application. In addition to this, such an application for substitution has to be filed within a period of 90 days from the death of the plaintiff.
7. In the instant case the application for substitution of LRs cannot be allowed for two reasons, first, the applicant/appellant is claiming himself to be the attorney of the deceased/testator on whose behalf he had filed the suit. But that would not be a ground for substitution of his name. The reason for this is that the power of

attorney of the applicant comes to an end the moment the principal dies, i.e. the plaintiff. The second drawback in the application under Order 22 Rule 3 CPC because of which the application cannot be allowed is that there is no averment made in the application as to who are the surviving legal heirs of the deceased nor the details are given therein. Merely because the deceased is survived only by his widow, who is a party to the suit does not absolve the applicant/appellant from disclosing these details in the application. It is also not mentioned in the application that the right to sue survives. On the contrary, what is stated is that the applicant/appellant is the executor of the Will but that does not entitle him to substitution of his name because by being an executor he does not become a legal representative. His job as an executor is to give effect to the wishes of the deceased/testator which he could do without being impleaded as a party to the present proceedings. Therefore, the application of the appellant for substitution of LRs is totally bereft of any merit reasoning and cannot be allowed even if abatement of the proceedings against the deceased/testator are set aside.

8. Similarly, the other two applications are not containing the basic ingredients of the sections under which they have been filed.
9. In the application under Section 5 of the Limitation Act, 1963, it has nowhere been stated that the facts averred in the application are constituting sufficient cause for condoning the delay caused in filing the application for substitution. Moreover, 'sufficient cause' is a cause which is beyond human control. It has nowhere been mentioned or shown as to how the application was filed belatedly and what sufficient cause prevented the appellant from filing the application within time more so, when he was power of attorney hold and the suit itself was filed through him. Therefore, because of this reasoning, I feel that the rejection of the three applications by the learned trial Court cannot be found fault with.
10. There is no illegality or infirmity in the order which has been passed by the learned trial Court and accordingly the appeal is totally misconceived and the same is dismissed.

V.K. SHALI, J.

MARCH 02, 2016

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