

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.No.2113 OF 2017

ORDER:

Heard Mr.N.Siram Murthy for petitioner and Mr.G.Venkat Reddy for respondents 2 and 3.

The plaintiff is the revision petitioner. The revision petitioner filed O.S.No.60 of 2014 for specific performance of agreement of sale dated 12.09.2011. The suit agreement was executed by defendant Nos.1 to 3. The suit was filed on 12.09.2014. As per the undisputed case of the parties, on 10.09.2014, Segi Reddy Subba Reddy, arrayed as 1st respondent, died leaving behind his wife and two sons as legal representatives. On 15.04.2015, the revision petitioner filed I.A.No.1103 of 2015 to condone the delay of 128 days in bringing legal representatives of Segi Reddy Subba Reddy on record as defendants 6 to 9. The application is resisted by respondent Nos.2 and 3 herein and through the order impugned in the revision, the application has been dismissed. Hence, the revision.

The trial Court firstly noted that the 1st defendant died on 10.09.2014 and the suit was filed on 12.09.2014. Therefore, the suit is not maintainable and also that the occasion to bring the legal representatives on record does not arise. The distinction to the decision relied on by parties is noted by observing that the decision is applicable where the matter is pending before the Court. Therefore, in a perfunctory manner, the conclusions have been recorded and the I.A was dismissed.

The Civil Procedure Code as has been held by a catena of decisions is a handmade of justice. This Court is constrained to observe that the trial Court ought to have looked into the decisions, reproduced the gist of it and thereafter the observation as a particular situation warrants ought to be made. The observations made in the order impugned in the revision are made with utmost callousness in disposing of the I.A. To conclude this aspect of the matter, this Court refers to paragraph 15 of the decision in VIJAYA BHARGAVI CHIT FUND (P) LTD., HYDERABAD v. J.RAMA RAO AND OTHERS¹, which reads thus:

“Basically, a plaintiff is presumed to be having a subsisting cause of action or dispute against the defendant in a suit, and institution of a suit against the dead person is virtually a contradiction in terms. The Courts have shown a semblance of lenience to the plaintiffs in cases where they were not aware of the death. There may be cases where the plaintiff had a dispute with the defendant and by the time he initiated the action, the defendant had expired. In such cases, the Courts have permitted the legal representatives of the deceased defendant to be brought on record, subject to the survival of cause of action against the proposed legal representatives. It is beyond anybody's comprehension that an action can be initiated against a person known to have died”.

From the above, it is clear that once without knowing the status of a party, if the suit is filed, then the party is permitted to take steps to bring the legal representatives on record. Even otherwise, the proximity of dates between the date of demise and institution probalilises the explanation of petitioner that without knowing the demise of 1st defendant, the suit has been filed.

¹ 2005(5) ALD 21

For the above reasons, the order impugned in the revision is set aside. Though the delay by itself in filing the application is not contested, still to give momentum to proceedings in the suit, the trial Court is directed to order the consequential applications, if any, pending in this behalf and proceed further in the suit.

The revision is, accordingly, allowed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, stand closed.

04th August, 2017

Lrkm



S.V.BHATT, J