

THE HON'BLE SRI JUSTICE S. V. BHATT

Civil Revision Petition Nos.5402, 5403, 5336, 5443 & 5444 of 2016

COMMON ORDER:

Heard Sri C.Prakash Reddy for Revision Petitioners. In spite of service of notice, there is no representation for Respondents.

2. These five Revision Petitions are directed against the orders dt.05.08.2016 passed by the Junior Civil Judge, Atmakur in five interlocutory applications in O.S.No.206 of 2010. For better appreciation, the details of the I.As., and the reliefs prayed therein are furnished hereunder:

S.No	C.R.P.No.	I.A.No.	Prayer in I.A.
1.	5402 of 2016	289 of 2016	Petition filed under Section 5 of Limitation Act to condone a delay of 579 days in filing the petition to bring on record the legal representatives of deceased Defendant No.2.
2.	5403 of 2016	291 of 2016	Petition under Order 32 Rule 3, r/w. Section 151 CPC to appoint Legal heir No.1 as guardian to the proposed legal heirs Nos.2 & 3
3.	5336 of 2016	290 of 2016	Petition under Order 22, Rule 9(2) r/w. Section 151 to set aside the order of abatement dt. 17.12.2014.
4.	5443 of 2016	288 of 2016	Petition under Section 5 of Limitation Act to condone a delay of 532 days in filing the petition to set aside the order of abatement.
5.	5444 of 2016	292 of 2016	L.R. Petition filed under Order 22, Rule 4, r/w. Section 151 CPC to bring on record the LRs of deceased Deft.No.2 as Defendants 7 to 98 in the suit.

3. Plaintiffs in O.S.No.206 of 2010 before the trial Court are the Revision Petitioners herein. It is the case of the revision petitioners that on 16.06.2014 the counsel appearing for the 2nd

Defendant/ 2nd Respondent herein informed the Court about the demise of 2nd defendant. Admittedly, the counsel representing the deceased party, did not follow the procedure under Order XXII, Rule 10A of CPC. The matter has been proceeded with from 16.06.2014 till 18.01.2016 when I.A.No.289 of 2016 was filed under Section 5 of Limitation Act to condone the delay of 579 days in filing the petition to bring on record the legal representatives of the 2nd defendant. To conform to the procedure, the petitioners were advised to file accompanying petitions for setting aside the order of abatement and appointment of guardian etc. The trial Court, through the order impugned in the revisions rejected these prayers. Hence, the present revisions.

4. Mr.Prakash Reddy for revision petitioners stoutly contends that the trial Court has not properly appreciated the chronology of events in the matter; the instructions to be given to Revision Petitioners; failure of the counsel for 2nd defendant in filing a Memo under Rule 10-A of Order XXII of CPC and consequence of such failure. He further submits that dismissal of these applications without even notice to proposed legal representatives, particularly at the instance of 1st defendant, is illegal, erroneous and unsustainable. In the matter of condoning the delay in filing petitions either to bring the legal representatives on record or in the event of delay resulting in abatement, condoning the same, to facilitate the administration of justice, he placed reliance upon

the decision of the Hon'ble Supreme Court reported in *Banwari Lal v. Balbir Singh*¹ on the following para:

“Provisions of Order 22 CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In *Sardar Amarjit Singh Kalra v. Pramod Gupta* (2003(3) SCC 272), a five-Judge Bench of this Court held as under:

‘26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. *The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice.* The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of

¹ (2016) 1 SCC 607

abatement, allowed the applications for impleadment even de hors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. *Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice'. (emphasis supplied)*

In *Stal Prasad Saxena v. Union of India* (1985 (1) SCC 163), it was observed that the rules of procedure under Order 22 CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained.”

Therefore, the learned counsel for revision petitioners prays for setting aside the orders under revisions and fairly submits that the Court ought to have issued notice to proposed parties, hear them, and basing upon the details they furnished, appropriate decision ought to have been taken.

5. I have perused the material available on record, including the orders impugned. In view of what has been adverted to above, without much deliberation, this Court is compelled to observe that the trial Court ought to have followed the procedure in the matter of condoning the delay, setting aside the order of abatement or bringing the legal representatives on record, to facilitate the administration of justice but not to defeat the same.

6. After considering the ratio of Apex Court in the decision referred to above and for the reason that the trial Court has taken a pedantic approach in the matter, the orders under revisions are set aside. The I.As., are restored to file and the trial Court is directed to issue notice to proposed parties, hear them and pass orders afresh in accordance with law and circumstances of the case.

7. The CRPS are accordingly allowed and are remanded to the trial Court as directed above. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

January 31, 2017
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Kv