

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 44 of 2015

Syam Sundar, S/o. Asman, Aged About 50 Years, R/o. Bazar Para, Farasgaon, Tahsil Kondagaon, Civil & Revenue District Kondagaon Chhattisgarh

---- Appellant

Versus

1. Tatu Nag, S/o. Nandu Nag, Aged About 56 Years.
2. Brijnag, S/o. Nandu Nag, Aged About 50 Years.
3. Chhedilal Nag, S/o. Nandu Nag, Aged About 42 Years.
4. Dukhu Nag, S/o. Nadi Nag, Aged About 53 Years.
5. Ghudau Nag, S/o. Nadi Nag, Aged About 56 Years.
6. Shivilal Nag, S/o. Kachru Nag, Aged About 28 Years.

All by Caste Kalar, R/o. Village Farasgaon, Tahsil Farasgaon, Civil & Revenue District Kondagaon, Chhattisgarh.

7. State Of Chhattisgarh, Through The Collector, Kondagaon, District Kondagaon, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Shobhit Koshta, Advocate
For Respondents No.1 to 5	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. R.K.Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

13.09.2018

Heard

1. The present appeal is against the order dated 18.02.2015 passed by the learned Additional District Judge, Kondagaon, in Civil Appeal No.7A/2012 whereby an application under Order 22 Rule 9 of C.P.C. was dismissed.
2. Against the judgment & decree dated 31.08.2012 an appeal was preferred by the appellant/ plaintiff Syam Sundar who lost the suit before the Court below. While pendency of the appeal on 20.06.2014 an application was filed by the respondents informing the death of respondent No.6 Shivilal. Subsequent to it, an

application was filed on 06.01.2015 under Order 22 Rule 4 of C.P.C. and another application under Order 22 Rule 9 of C.P.C. read with Section 151 of C.P.C. to bring the legal heirs on record and set aside the abatement. The said application was dismissed. Consequently, it was held that the entire appeal has abated.

3. Learned counsel for the appellant submits that the application under Order 22 Rule 4 and application under Order 22 Rule 9 of C.P.C. are not penal in nature. Reliance was placed in case of ***Banwari Lal (D) By LRs. & Another v. Balbir Singh***¹ and he therefore submits that the abatement may be set aside and the appeal may be allowed.
4. Learned counsel for the respondents vehemently opposes the same and submits that there is no merit in this case as no proper reasons have been assigned.
5. Perused the order dated 18.02.2015. Perusal of the order and documents attached in this appeal and the record would show that the Civil Suit bearing No.30A/2011 was filed by the appellant was dismissed on 31.08.2012, against which a regular appeal was preferred which was bearing No.7A/2012. During pendency of the appeal on 20.06.2014 an information was given by the respondents' counsel that the respondent No.6 namely Shivilal has died. Subsequently, an application was filed beyond the period of limitation under Order 22 Rule 4 of C.P.C. to bring the legal heirs of the deceased respondent as also an application was filed under Order 22 Rule 9 of C.P.C. read with Section 151 of C.P.C. to set aside the abatement. It was stated that though the information was

¹ AIR 2015 SC 3573

given to the counsel but due to inadvertence the application could not be preferred within time.

6. The Supreme Court in ***Banwari Lal (D) By LRs & Another v. Balbir Singh***¹ has reiterated the earlier law laid down in ***AIR 2003 SC 2588*** and held as under :

“10. Provisions of Order XXII, 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 : (*AIR 2003 SC 2588*), 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 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."

11. In *Sital Prasad Saxena (D) by LRs. v. Union of India* (1985) 1 SCC 163 : (AIR 1985 SC 1), it was observed that the rules of procedure under Order XXII, 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.

7. Applying the aforesaid principles and the period of delay, which has been primarily appears to be existed of about 134 days, I am inclined to allow this appeal.

8. Accordingly, the order dated 18.02.2015 is set aside. The application under Order 22 Rule 9 read with Section 151 of C.P.C. to set aside the abatement and also the application under Order 22 Rule 4 of C.P.C. are allowed. The case is remanded back to the Court below. The Court below shall further issue notice under Order 22 Rule 4 of C.P.C. to the proposed legal heirs and thereafter shall adjudicate the matter.

Sd/-
(Goutam Bhaduri)
Judge