

HIGH COURT OF CHHATTISGARH, BILASPUR

M.C.C. No. 358 of 2017

Smt. Fulmati Choudhary, W/o. Late Shri S.L.Choudhary, Aged About 59 Years, At Present R/o. Near Ayyappa Mandir Bilaspur, P.S. Civil Lines Bilaspur District Bilaspur, Chhattisgarh, For Late Shri S.L.Choudhary, S/o. I.R.Choudhary.

---- Appellant

Versus

1. Central Bank Of India, Through Its Managing Director, Central Office Nariman Point Mumbai, Maharashtra
2. The Zonal Manager cum Appellate Authority, Central Bank Of India, Zonal Office, Bombay Market 1st Floor, G.E.Road, Raipur, District Raipur (M.P.) now Chhattisgarh.
3. The Regional Manager cum Disciplinary Authority, Central Bank Of India, Regional Office, P.B.No.13 Choubey Colony Raipur, District Raipur (M.P.) now Chhattisgarh

---- Respondents

For Applicant : Mr. Atul Pandey, Advocate

For Respondents : No representation even in the second call.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27.09.2018

Heard

1. This is an application for restoration of Writ Petition No.4252/1997.
2. Perusal of the record would show that the Writ Petition No.4252 of 1997, which was filed by one S.L.Choudhary, husband of the present petitioner, was dismissed for want of prosecution on 26.02.2013.
3. Perusal of the original case file would show that writ petition was filed by the late husband of the petitioner to set aside the order of dismissal made by the Bank, back wages and other service benefits along-with reinstatement were claimed with the consequential benefits. The petitioner S.L.Choudhary died on

21.04.2012. The wife of the original petitioner thereafter filed an application for restoration bearing MCC No.212/2014 wherein the Division Bench of this Court on 24.03.2014 allowed the prayer for withdrawal of the application for restoration with liberty to file appropriate application under Order 22 Rule 9 of C.P.C. alongwith other applications. The MCC thereafter appears to have been filed on 25.04.2017 alongwith the MCC, an application for condonation of delay has been filed wherein it has been stated that the applicant being a widow has gone to the village after death of her husband and, as such, the proper application could not be preferred. It is stated that she being a widow and legal heir wants to prosecute the claim made by her late husband Shri S.L.Choudhary. Undoubtedly, the application is delayed, however, this Court cannot ignore the dispute as to the parties who are prosecuting before the Court one is widow and another is the corporate Bank supported by its legal advisers & experts.

4. To set aside any abatement, the Supreme Court in case of ***Banwari Lal (D) By LRs. & Another v. Balbir Singh***¹ has reiterated the principles of Order 22 Rule 9 of C.P.C. by following the principles laid down in ***AIR 2003 SC 2588***, which reads 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:

¹ AIR 2015 SC 3573

“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.

5. Applying the aforesaid ratio and considering the fact that the original writ petition was contested by the husband of the petitioner and after his death, the wife has sought for restoration of the original writ petition bearing W.P. No.4252 of 1997, which was dismissed as withdrawn with liberty to file an appropriate application under Order 22 Rule 9 of C.P.C. by the order dated 24.03.2014, it cannot be stated that the widow the applicant was completely dormant & negligent. Further balancing the fight in between the parties and their status, it appears that the petitioner being a widow, the dismissal of restoration would lead to unequal settlement. Considering this, to advance the cause of justice on merits, the Court cannot ignore the position of petitioner in the Indian society, as such, I am inclined to allow this petition.

6. Accordingly, the petitioner is allowed to prosecute her claim, which was started by his late husband S.L.Choudhary against the Bank. The application for condonation of delay is allowed and the application under Order 22 Rule 9 of C.P.C. is also allowed. The dismissal order dated 26.02.2013 is set aside. The petitioner is allowed to contest the Writ Petition No.4252/1997 and the necessary amendment may be carried out within a further period of four weeks and the petitioner is allowed to be impleaded in the Writ Petition No.4252/1997.
7. In view of the above, the writ petition is restored to its original number.

Sd/-
(Goutam Bhaduri)
Judge