

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 652 of 2018

Jayesh Yadav S/o Late Radhe Raman Yadav Aged About 43 Years
R/o Panchsheel Colony, Behind Collectorate, Ward No. 41,
Chhindwada, Tahsil And District- Chhindwada, Madhya Pradesh,
PIN 480001

---- Petitioner

Versus

1. Sudhir Gupta S/o Late Shankar Lal Gupta Aged About 54 Years,
2. Smt. Sandhya Gupta D/o Late Shankar Lal Gupta Aged About 50 Years,
3. Jyoti Gupta D/o Late Shankar Lal Gupta, aged about 48 years,
4. Smt. Sibbo Gupta, D/o Late Shankar Lal Gupta, Aged About 40 Years,

All are R/o In Front Of City Club, Station Road, Durg, Tahsil And
District- Durg, Chhattisgarh PIN 491001

---- Respondents

For petitioner – Shri Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

1/08/2018

Heard.

1. Instant petition is against the order dated 5/07/2018 wherein an application filed under Section 151 of the CPC filed by the legal heirs of the defendant/petitioner herein has been dismissed.
2. Suit was filed by the respondent Shankarlal Gupta against one Snehlata Yadav. During pendency of the suit, Snehlata Yadav died on 9/07/2016 and order sheet of 24/07/2016 would show that information was given that sole defendant has died. Subsequently, order sheet of 22/02/2017 shows that an application was filed under Order 22 Rule 4 of CPC along with an application under Section 5 of the Limitation Act. Order sheet of 5/07/2017 subsequently reveals that an application under Order 22 Rule 4 of CPC along with an application under Section 5 of the

Limitation Act was allowed. Thereafter, after amendment notice was ordered. Proposed legal heirs moved an application under Section 151 of the CPC claiming that earlier the application under Order 22 Rule 5 of CPC read with Section 5 of the Limitation Act was not served to them and despite non service the orders have been passed. Therefore, they may be heard on the application which was dismissed by the impugned order.

3. Learned counsel submits that the petitioner was not served with the application under Order 22 Rule 4 of CPC and application under Section 5 of the Limitation Act and without notice the orders were passed allowing the application under Order 22 Rule 4 of CPC and application under Section 5 of the Limitation Act. It is stated that suit automatically stands abated when the legal heirs were not brought within 90 days of the death or within 30 days of the information supplied. Therefore, court should have passed the speaking order as to whether the petitioner was served or not.

4. Perused the petition and the document connected with it. Death certificate of the sole defendant is dated 9/07/2016. On 24/07/2016 the order sheet reflects that information was given about death of the sole defendant. Thereafter, after the period of limitation on 22/02/2017 the application was filed under Order 22 Rule 4 of CPC and another application under Section 5 of the Limitation Act and the order sheet dated 5/07/2017 shows that it was allowed. In the intermittent date of 25/04/2017 and 12/05/2017 the order sheet do not show that the proposed legal heirs were served and the order allowing the application under Order 22 Rule 4 of CPC and application under Section 5 of the Limitation Act also when was allowed on 5/07/2017 nothing is reflected from the order that proposed defendant was served. In such case, when application was filed under Section 151 of the CPC to explore that issue whether without service of the summon the application was allowed it should have been dealt with reasoned order. Impugned order do not reflect that it is

dismissed for the reason but prima facie it shows court do not feel it proper to hear it. It is obvious that when legal heirs are not brought within specified time, then suit automatically stands abated after period of limitation which gives statutory right to the party against whom it is abated. Apparently, it appears there is no application was filed under Order 22 Rule 9 of CPC to set aside the abatement and directly application under Order 22 Rule 4 of CPC and application under Section 5 of the Limitation Act was allowed and entertained, though it was filed beyond the period of limitation.

5. In the result, order dated 5/07/2018 is set aside. Trial court is directed to decide afresh application under Section 151 of CPC with a clear finding as to whether the petitioner herein was served or not, thereafter shall pass reasoned order by following the provisions of Order 22 of the CPC.

6. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE