

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4647 of 2016 (O&M)

Date of Order: 01.06.2018

Mangal Singh through his LR Hardev Singh

..Petitioner

Versus

Jaswant Singh through his LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shashank Sharma, Advocate and
Mr. Naveen Sharma, Advocate,
for the petitioner.

Mr. Anil Kumar Garg, Advocate,
for respondent no.3.

ANIL KSHETARPAL, J(Oral)

By the order under challenge, execution petition filed by the legal representatives of the decree holder has been dismissed on the ground that the decree passed in favour of their predecessors (DH) was nullity on the ground that before the date of decree, decree holder had died.

In the States of Punjab, Haryana and Union Territory of Chandigarh, significant amendments have been made in Order 22 of the Code of Civil Procedure. By way of these amendments, the advocate who was appearing for the party and becomes aware of the death of a party to the litigation must give intimation about the death of that party to the court and it shall be the duty of the legal heirs to come on record as legal heirs.

Still further, under Order 22 Rule 3, sub-rule (2) has been substituted and it has been provided that where within the time limited by law no application is made under sub-rule(1), the suit shall not abate and

the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place.

Amendments have been made in Order 22 of the Code of Civil Procedure, in the States of Punjab, Haryana and Union Territory of Chandigarh. Now the amended Code of Civil Procedure as applicable for these States and Union Territory, Chandigarh is extracted as under:-

Order 22 Rule 2 of the Code of Civil Procedure, 1908

“2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.-Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

2-A. Every Advocate appearing in a case who becomes aware of the death of a party to the litigation(whether he appeared for him or not) must give intimation about the death of that party to the Court and to the person who is *dominus litis*.

2-B. The duty to bring on record the legal representatives of the deceased-defendant shall be of the heirs of the deceased and not of the person who is

dominus litis.

Order 22 Rule 3 of the Code of Civil Procedure, 1908

“3. Procedure in case of death of one of several plaintiffs, or of sole plaintiff.-

(1) Where one or two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist.”

Order 22 Rule 4 of the Code of Civil Procedure, 1908

“4. Procedure in case of death of one of several defendants or of sole defendant.-

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application

made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the court shall set aside the decree upon such terms as to costs or otherwise as it thinks fit.

(5) Before setting aside the decree under sub-rule (4) the Court must be satisfied *prima-facie* that had the legal representative been on the record a different result might have been reached in the suit.

(6) The provisions of Section 5 of the Indian Limitation Act (36 of 1963) shall apply to applications under sub-rule (4).

On reading of the aforesaid amendments, it is clear that the decree passed by the court is a valid decree and death of the plaintiff-decree holder would not result in abatement of the suit.

Learned counsel for respondent no.3 has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Kishun @ Ram Kishun (dead) thru. Lrs. v. Bihari (d) by Lrs., 2005(6) SCC 300.**

The aforesaid case relates to an appeal, which was filed against the judgment passed by the High Court of Allahabad. In the State of Uttar Pradesh, such corresponding amendments in the Code of Civil Procedure, if any, were not brought to the notice of the Hon'ble Supreme Court. Hence, the aforesaid judgment would have no application.

Learned counsel for the petitioner has also relied upon a judgment passed by the Hon'ble Single Bench of this Court in the case of **Mahesh v. Ashok Kumar, 2001(2) R.C.R.(Civil) 43.**

The aforesaid judgment is in a peculiar fact situation. In the aforesaid case, it was noticed that Smt. Lodha Bai died much before the filing of the suit in the year 1985 and, therefore, the Court found that the suit itself was wrongly instituted and hence the decree passed against a dead person is a nullity.

Still further, the aforesaid judgment is prior to the period when amendments in Order 22 Rule 3 and Order 22 Rule 4 of the Code of Civil Procedure were incorporated.

In view of the aforesaid, orders under challenge are set aside and the revision petition is allowed.

The learned Executing Court is directed to proceed with the execution petition.

Parties through their counsels are directed to appear before the trial court on 19.07.2018.

Counsel for respondent no.3 has submitted that the legal

representatives of respondent no.3 are not in contact with him.

If legal representatives of respondent no.3 do not appear before the Executing Court, the Court would be at liberty to issue fresh notice.

June, 01, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No