

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

143

CR No.55 of 2018 (O & M)
Date of Decision:29.01.2018

Surender Kumar Chopra

...Petitioner

Versus

Damyanti Devi Chopra (Now deceased) and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Satinder Khanna, Advocate
for the petitioner.

Mr. Vikas Chaudhary, Advocate
for respondent No.3.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-petitioner is in the revision petition against the order dated 28.10.2017 dismissing the application under Order 22 Rule 3 of the Code of Civil Procedure for bringing on record legal heirs of Rajender Chopra-defendant No.2, who had expired before filing of the suit.

Learned trial Court had dismissed the application on the ground that the application is belated. The Court has further noticed that the suit was instituted against the dead person.

It is not in dispute that defendants No.1, 3, 4, 5 and 6 were alive on the date of institution of the suit. Plaintiff has claimed that he did not know that defendant No.2 is already dead on the date of signing of the plaint.

The impugned order passed by the Court has clearly overlooked the amendments made by this Court in Order 22 Rule 3 and Order 22 Rule 4 of the Code of Civil Procedure. This Court has already amended the Code

“ Where within the time limited by law no application is made under sub-rule (1) the suit shall not abate as against the deceased defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as it had been pronounced before the death took place.”

[Vide Noti. No.GSR 39/C.A. 5/1908/S. 12257, w.e.f. 11-4-1975].

(ii) The following shall be inserted as sub-rule (4), (5) and (6) to Rule 4 of Order XXII:

“(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).”

abatement of the suit. The Court is entitled to proceed with the case and pronounce the judgment notwithstanding death of one of the defendant. The amendment was made to remove the technical objections and allowing the Courts to proceed with the case.

Learned counsel for the respondents have vehemently argued that since defendant No.2 had died before the filing of the suit, therefore, the application should have been under Order 1 Rule 10 of the Code of Civil Procedure and not under Order 22 Rule 3 of the Code of Civil Procedure.

In the considered opinion of this Court, wrong mentioning of the provision should not detain the Court from passing a substantive order. The amendment made by this Court is only for the purpose of facilitating expeditious disposal of the suits.

In view thereof, the impugned order is set aside and the application for impleading legal heirs of defendant No.2 is allowed under Order 1 Rule 10 of the Code of Civil Procedure. The Court shall now issue notice to the newly added parties.

Hence, this revision petition is allowed.

29.01.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No