

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CR No.6213 of 2016
Date of decision: 01.03.2018

Krishna

..... Petitioner

Versus

Naresh Dutt

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajesh Arora, Advocate
for the petitioner.

Mr. Rajesh Lamba, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

This Court is faced with a strange situation. A suit was filed by Naresh Dutt, the respondent herein against Basant Lal, his uncle. Basant Lal is said to be an old man who could not prosecute the case. He was proceeded ex parte vide order dated 04.05.1999. Ultimately the suit was decided vide ex parte judgment dated 30.10.1999. An application for setting aside the ex parte order and decree on behalf of Basant Lal was filed on 20.11.2007 although he had already died on 03.09.2007. The application for restoration was also dismissed for non-prosecution. Another application was filed for restoration of the application for setting aside the ex parte decree. The aforesaid application was again filed on behalf of Basant Lal. The aforesaid application was allowed on 15.07.2015. Thereafter, Smt. Krishna claiming to be daughter of Basant Lal, the only legal heir filed an application as a legal heir for bringing her on record as a

legal heir of Basant Lal. Learned trial Court noticing that the original application for setting aside the ex parte dated 20.11.2007 was filed without disclosing that Basant Lal had already died on 03.09.2007 and second application filed for restoration of first application in 2010 was also filed on behalf of Basant Lal, dismissed the application. The Court ordered SHO, Civil Line to investigate the matter and thereafter register a FIR. The Court has also dismissed the application for impleading Smt. Krishna as a legal heir of late Sh. Basant Lal who died on 03.09.2007. The Court has noticed that the application has been filed after an unexplained delay of 9 years.

Learned trial Court has overlooked the amendment made by this Court in Order 22 Rule 4, CPC. By way of amendment, the Punjab and Haryana High Court has provided that if within the time limited by law no application is made, the suit shall not abate as against the deceased defendant. Further amendment has been made that if a decree has been passed against the deceased defendant, a person claiming to be legal representative may apply for setting side of the decree qua him. The amendment brought in by the Hon'ble Punjab and Haryana High Court is extracted as under:-

“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 provis of Section 5 of the Indian Limitation Act (36 of 1963) shall apply to applications under sub-rule (4).”

In view of the aforesaid amendment, learned trial Court committed an error in refusing to bring petitioner-Krishna on record as a legal heir of Basant Lal. There is no other application for bringing on record legal heirs of Basant Lal. It is not in dispute that the application for setting aside the ex parte decree is pending. Such being the position, learned trial Court committed a material irregularity in dismissing the application without noticing the amendment to Order 22 Rule 4, CPC.

In view thereof, the order under challenge is set aside. The application filed by the petitioner for bringing her on record as a legal heir of Basant Lal is allowed. The Court would proceed with the matter.

Revision petition is allowed.

01.03.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No