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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8017-2015 (O&M)

Date of decision : 21.02.2018

Lakhwinder Singh

... Petitioner(s)

Versus

Salwinder Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Sirphikhi, Advocate
for the petitioner.

Ms. Manpreet Kaur, Advocate
for respondent No.1.

Mr. Piyush Khanna, Advocate
for respondent No.2.

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order dated 03.11.2015 (Annexure P-5), whereby an application for bringing on record the legal heirs of defendant No.1-Bhim Singh, has been dismissed on the premise that the suit qua defendant No.1 was abated for having not moved the application within the time as well as by relying upon the judgment of Hon'ble Rajasthan High Court rendered in **“Kailash Narain Mahavar V/s Sona Bai and others” 2014 (4) Civil Court Cases, page 199.**

Learned counsel for the petitioner-plaintiff submits that in view of amendment made by this Hon'ble High Court in Sub Rule (3) of Rule 4 of Order 22 CPC, there is no limitation for bringing on record legal representatives of deceased defendant.

Learned counsel for the respondent-defendant submits that the application was moved after four years of the suit and rightly so, the same has been dismissed.

I have heard the learned counsel for the parties and appraised the paper book. The amendment in sub rule (3) of rule (4) of order 22 of Code of Civil Procedure reads thus:-

“Punjab, Haryana and Chandigarh. - (i) In its application to the State of Punjab, Haryana and Chandigarh the following shall be substituted for the existing sub-rule (3) to Rule 4 Rule 4 of Order XXII;

“Where within the time limited by law no application is made under sub-rule (1) the suit shall not debate 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”.

In view of the aforementioned provisions, I am of the view that the trial Court was totally fallacious in declining the application by relying upon the judgment cited supra, where local amendment has not been caused.

In view of the aforementioned provisions, the impugned order under challenge is set aside and the application for bringing on record the LRs of defendant No.1-Bhim Singh is allowed.

The present revision petition stands allowed.

21.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**