

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

-.-

Review Application 76-C of 2016 in
RSA 2724 of 1985

Date of decision: 20.04.2018

Smt. Bibi

.....Non-applicant/appellant

Versus

Atma Nand Puri

.....Applicant/respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Vikas Kumar, Advocate
for the applicant

-.-

Rekha Mittal, J. (Oral)

Prayer in this application filed under Order 47 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (in short, 'CPC') is for review of judgment dated 23.07.2014 passed in RSA No. 2724 of 1985 whereby the aforesaid appeal filed by non-applicant/appellant Smt. Bibi has been allowed.

The sole submission made by counsel for the applicant/respondent is that as Smt. Bibi appellant died in the year 2005 during pendency of appeal and her legal representatives were not brought on record, appeal filed by her would stand abated, therefore, judgment dated 23.07.2014 passed in favour of the non-applicant/appellant is liable to be recalled in exercise of power of review.

To substantiate his contention, it is argued that Punjab and Haryana High Court amended sub rule (2) of Rule 3 of Order XXII CPC though sub rule (1) of the aforesaid Rule was not amended, therefore, amendment in sub rule (2) of Rule 3 would not enure to benefit of the non

applicant/appellant to continue with the appeal despite failure of legal representatives of the appellant in filing application for their impleadment as such within the prescribed period of limitation.

I have heard counsel for the applicant and gone through provisions of Order XXII CPC coupled with amendment of sub rule (2) of Rule 3 by this Court. A relevant extract from Rule 3 of Order XXII CPC as well as amendment made by this Court in sub Rule (2) reads as follow:-

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.- (1) Where one of 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 abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the the court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

High Court Amendment

In Order XXII, in Rule 3 for sub rule (2), substitute the following sub rule, namely-

(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 even shall continue to subsist.”

Perusal of Rule 3 sub rule (1) makes it evident that the said rule only provides for an application to be made for bringing on record legal representatives of the deceased plaintiff in case of death of a plaintiff or sole

plaintiff in case the right to sue survives. Sub Rule (2) of Rule 3 CPC deals with consequence of failure of an application to be made under Sub Rule (1) of Rule 3 for bringing on record the legal representatives of deceased plaintiff within the time limit. As per sub Rule (2) of Rule 3, the suit shall abate so far as the deceased plaintiff is concerned in case the application for bringing on record his/her legal representatives is not made within the stipulated time. However, this Court has amended sub rule (2) of Rule 3 to say that even if no application is made under sub rule (1) for bringing on record legal representatives of deceased plaintiff, the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced.

Counsel for the applicant has not disputed that procedure prescribed under sub Rules 3 and 4 of Order XXII CPC applies with equal force to the appeal arising out of the civil suit as the appeal is in continuation of the suit. Taking into consideration the amendment made in sub rule (2) of Rule 3 by this Court applicable with effect from 21.02.1992, it is difficult to accept contention of the applicant that the appeal filed by Smt. Bibi would stand abated for want of her legal representatives having been brought on record.

No other point has been raised.

For the foregoing reasons, the application fails and is accordingly dismissed.

(Rekha Mittal)
Judge

20.04.2018
mohan bimbira

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