

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 35 of 2019**

1. Sudhir Gupta, S/o Late Shankar Lal Gupta, Aged about 54 years
2. Smt. Sandhya Gupta, D/o Late Shankar Lal Gupta, aged about 50 years,
3. Jyoti Gupta, D/o Late Shankar Lal Gupta, Aged about 48 years,
4. Smt. Sibbo Gupta, D/o Late Shankar Lal Gupta, Aged about 40 years

All R/o Infront of City Club Station Road, Durg, Tahsil & District – Durg
(C.G.)

----Applicants/plaintiffs.

Versus

Jayesh Yadav, S/o Late Radhe Raman Yadav, Aged about 43 years, R/o Panchsheet Colony, Behind Collectorate, Ward No. 41, Chhindwada, Tahsil and District- Chhindwara (M.P.) -PIN -480 001

---- Respondents/defendants

For Applicants	:	Mr. P.R. Patankar, Advocate.
For Respondent	:	Mr. B.L. Parakh & Ms. Rashul Bhawnani, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/04/2019

(1) Original plaintiff – Shankar Lal Gupta filed a civil suit for specific performance of contract against original defendant – Smt. Snehlata Yadav. Shankar Lal Gupta died during the pendency of suit and his legal heirs were brought on record and, thereafter, sole defendant – Smt. Snehlata Yadav also died on 09.07.2016 and the information about her death was intimated before the trial Court on 24.07.2016. Application to this effect under Order 22 Rule 4 of the Code of Civil Procedure, 1908

(henceforth “CPC”) along with application under Section 5 of the Limitation Act was filed and that application was granted by the trial Court on 05.07.2017. Thereafter, an application for recall of the order dated 5.7.2017 was filed by one of the legal representatives of defendant namely – Jayesh Yadav, that was dismissed by the trial Court on 5.7.2018. The order dated 5.7.2018 was challenged by Jayesh Yadav, one of the legal representatives of original defendant – Snehlata Yadav before this Court in Writ Petition (227) No. 652 of 2018. This Court by order dated 1st August, 2018 set aside the order dated 5.7.2018 and directed the trial Court to decide the application under Section 151 of the CPC afresh. By the impugned order dated 17.12.2018, learned trial Court rejected the application under Section 151 of the CPC and consequently application under Order 22 Rule 4 of the CPC was also rejected, against which this civil revision under Section 115 of the CPC has been preferred.

(2) Shri P.R. Patankar, learned counsel appearing for the applicants would submit that the trial Court is absolutely unjustified in holding on the one hand that the application under Section 151 of the CPC has no merit and simultaneously on the other hand, the application under Order 22 Rule 4 of the CPC read with Section 5 of the Limitation Act has also been rejected and both the orders are contradictory to each other, therefore, it is liable to be set aside.

(3) Shri B.L. Parakh, learned counsel for the non-applicant, would submit that against the impugned order, appeal under Order 43 Rule 1(k) of the Code of Civil Procedure would be maintainable. He further submits that the trial Court is absolutely justified in rejecting the application under Order 22 Rule 4 of the CPC and

consequently right in dismissing the suit, as such, revision petition is liable to be dismissed.

(4) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(5) Admittedly, the application under Order 22 Rule 4 of the CPC for substitution of defendant – Smt. Snehlata Yadav was granted by the trial Court without notice to legal heirs of defendant on 5.7.2017, which led to filing of application by one of the legal representatives of defendant, Jayesh Yadav for recall of the order dated 5.7.2017, which was rejected by the trial Court by order dated 5.7.2018, that was questioned before this Court. This Court by order dated 1.8.2018 passed in Writ Petition (227) No. 652 of 2018 set aside the order dated 5.7.2018 and directed the trial Court to decide the application under Section 151 of the CPC afresh. But this time, the trial Court has rejected the application under Section 151 of the CPC and also rejected application under Order 22 Rule 4 of the CPC read with Section 5 of the Limitation Act, which was granted earlier by order dated 5.7.2017.

(6) The trial Court failed to appreciate the order passed by this Court in Writ Petition (227) No. 652 of 2018 wherein this Court has only directed to consider the application for recall of the order dated 5.7.2018. The order dated 5.7.2017 could have been set aside only if order dated 5.7.2018 is recalled and application for substitution is restored to its original number for hearing and disposal in accordance with law.

(7) Be that as it may, this Court is satisfied that sufficient cause has been shown for delay in filing the application for substitution of legal representative of original defendant – Snehlata Yadav under Order 22 Rule 4 of the CPC, as the suit is for specific performance of contract and the same has to be decided on merits and cause shown in the application appears to be sufficient for delay in filing the same.

(8) Even otherwise, the Supreme Court in the matter of **Banwari Lal v. Balbir Singh**¹ has held that provisions of Order 22 CPC are not penal in nature and held in para-9 & 10 as under :-

“9. Provisions of Order 22 CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In *Sardar Amarjit Singh Kalra v. Pramod Gupta*², a five Judge Bench of this Court held as under : SCC pp.300-01, para 26)

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and

1 (2016) 1 SCC 607

2 (2003) 3 SCC 272

thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. *The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice.* The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. *Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice."*

10. In *Sital Prasad Saxena v. Union of India*³, it was observed that the rules of procedure under Order 22 CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause,

3 (1985) 1 SCC 163

delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained.”

(9) Reverting to the facts of the present case, I am of the considered opinion that the trial Court is absolutely unjustified in rejecting the application under Order 22 Rule 4 of the CPC read with Section 5 of the Limitation Act, as sufficient cause has been shown for delay in filing the application and thereby committed illegality in rejecting the said application. Thus, the impugned order dated 17.12.2018 is liable to be and is hereby set aside. Legal representatives of original defendant – Snehlata Yadav namely Jayesh Yadav, Ashish Yadav and Preeti Jabalpure along with their full address be brought on record within 10 days from their appearance before the trial Court.

(10) Parties are directed to appear before the trial Court on 13th May, 2019.

(11) Accordingly, the civil revision is allowed to the extent indicated hereinabove.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

