

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

CR-943-2020 (O&M)

Date of Decision: September 01, 2022

Ram Pal (since deceased) through LRs

...Petitioner

VERSUS

Satbir Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Amit Jain, Advocate
for the petitioner.

Mr.Rose Gupta, Advocate
for the respondents.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 22.01.2020 passed by learned Addl. District Judge, whereby, an application dated 25.11.2019 filed by the petitioners for impleading them as legal representatives of Lt.Sh. Ram Pal-defendant-appellant No.1, has been dismissed, while, holding that appeal qua appellant No.1 stands abated.

Background facts, as culled out from the paperbook, are as follows:-

That, respondents-plaintiffs had initially filed suit for possession and the same was decreed vide judgment and decree dated 05.03.2015. Feeling aggrieved, the defendants namely Ram Pal, Anil Kumar, Sunil Kumar and Kamal Kumar, had filed the appeal. During the

pendency of the appeal, appellant No.1 Ram Pal had died on 25.10.2018. Thereupon, legal heirs of Ram Pal filed an application dated 25.11.2019 for impleading them as LR's of defendant-appellant No.1 (since deceased).

In pursuance of notice issued, the respondents made appearance and had filed reply, thereby, resisting the claim of the applicants. After hearing the arguments, vide impugned order dated 22.01.2020, the said application was dismissed.

At the very outset, it is pertinent to mention that said application was dismissed, while observing that appellant No.1 had died on 25.10.2018 and an application to implead the LR's had been filed on 25.11.2019. Also, it was observed that there are three other appellants namely Anil Kumar, Sunil Kumar and Kamal Kumar, sons of Diwan Singh. It was held that since there is no application for condonation of delay in filing the application by the applicants to implead them as LR's of deceased Ram Pal, therefore, appeal qua appellant No.1-Ram Pal (since deceased) stands abated, as the application has not been filed within 90 days. Reference has been made to authority titled as '**Gurnam Singh (D) through L.R.s and others vs. Gurbachan Kaur (D) by L.R.s and others, 2017(4) LJR 787.**

However, the view so taken is patently not sustainable as it is against the mandate of the High Court Rules and Orders of this Court as this Court has amended Order 22 Rule 3 CPC vide Punjab and Haryana High Court Amendment dated 25.02.1992 w.e.f. 04.02.1992 and sub-rule (2) of Rule 3 Order 22 CPC reads as follows:-

“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, the contract between the deceased and the pleader in that event shall continue to subsist.”

The aforesaid amendment has not been taken into consideration by the lower Appellate Court. Though, reliance has been placed on ***Gurnam Singh's case (supra)*** but however, this Amendment was not brought to the notice of the Hon'ble Apex Court.

It is pertinent to mention that Local Amendment, which has been made in the CPC, is not inconsistent with the amendment made by the Amending Act of 2002. In this regard, reference is made to judgment passed by this Court in ***Bijender Singh vs. Phool Kaur, 2010 (18) RCR (Civil) 18***, wherein, it was held that only those Local amendments/provisions in the Civil Procedure Code, which are inconsistent to the amendments made by the Amending Act of 2002, shall stand repealed-No change has been effected in the provisions of Order 22 of the Civil Procedure Code by the Amending Act 22 of 2002-Only difference between Order 22, Rule 3 and Order 22, Rule 4 is that Order 22, Rule 3 is applicable, where a plaintiff dies whereas, Order 22, Rule 4 applies where death of a defendant has taken place.

Likewise, even the Hon'ble Apex Court in ***Kulwant Kaur vs. Gurdial Singh Mann (dead) by L.R.s (2001) AIR (SC) 1273***, had laid down that only those Local Laws, which are inconsistent with the provisions of the Amending Act 2002, are held to be repealed. Local amendment, as stated aforesaid, made by High court vide notification dated 21.02.1992,

does not stand repealed by the Amending Act 2002.

In the light of the same, there is no limitation to bring on record legal representatives of the appellant-plaintiff, in a suit or an appeal, as the case may be. Order 22, Rule 3 (2), as substituted vide notification dated 21.2.1992, as inserted by High Court is saved and there is thus, no limitation for filing of an application to bring on record the legal representatives of the appellant, who had died during the pendency of the appeal.

In this regard, reference is also made to the decision rendered by Coordinate Bench of this Court in ***Ram Phal and others vs. Harbans Lal and others, 2014(69) RCR (Civil) 798***, wherein, an application filed for impleadment of LRs of one of the deceased plaintiff, was dismissed, while holding that death of one of the plaintiff did not make the suit abate and there was a right to sue which survives. However, the revision petition filed by the legal representatives, on the basis of the amendment made by this Court vide notification dated 21.02.1992, which has taken effect w.e.f. 04.02.1992, the view, so taken by the Court below, was held to be patently not sustainable. Therein, reference was also made to decisions rendered in ***Amro vs. Parbati, 2000 (4) RCR (Civil) 671***; ***Kali Ram vs. Mangat Rai, 2001 (3) Latest Judicial Reports 435*** and in ***Lal Chand and others vs. Raghu Nath and others, 2010 (1) RCR (Civil) 149***, wherein, this Court had held that there is no limitation for impleading the legal heirs. The relevant observations in Lal Chand's case (supra), were reproduced, as herein given:-

“7. As per the amendment, where one of two or more plaintiffs dies and 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 in that behalf, shall cause the legal representatives of the

deceased plaintiff to be made a party and shall proceed with the suit. The amendment further speaks that even if no application is filed within time, then the suit shall not abate against the deceased plaintiff and the judgment could 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 deceased and the pleader in that event shall continue to subsist.”

Further, it was also observed as under:-

*“Similarly in **Balraj Sharma and others vs. Shanti and others, 2011 (5) RCR (Civil) 617**, it was noticed that where the defendant had died and legal representatives were not brought on record, it could not invalidate the judgment of the Trial Court. In **Sukhdev Singh vs. Charanjit Singh and others, 2012 (1) RCR (Civil) 932**, the amendment dated 21.02.1992 was discussed. It was held that if application was not filed within the prescribed period of 90 days for bringing on record the legal representatives, it could not be said that the suit stood abated. The relevant observations read thus:-*

“23. Hence, in view of these facts, it cannot be said that the suit filed by respondent-plaintiff stood abated as application for bringing on record legal representatives of deceased-plaintiff was not filed within prescribed period of limitation of 90 days or that the application for bringing on record legal representatives of deceased -defendant (Subhash Chander) was also not filed within prescribed period of limitation. There is no dispute that right to sue survives to legal representatives of deceased-plaintiff and the right to sue also survives qua legal representatives of deceased-defendant -Subhash Chander. Hence, there is no limitation for bringing on record legal representatives of the deceased litigants.”

Thus, in the light of the aforesaid amendment made and the settled law, learned lower Appellate Court was not justified in dismissing the application for impleadment of petitioners as LR's, while observing that they had filed an application on 25.11.2019, whereas, Ram Pal had died on 25.10.2018.

Accordingly, the present revision petition is hereby allowed and the impugned order dated 22.01.2020 is set aside. Learned lower Appellate Court shall pass fresh order on the application for impleading petitioners as LR's of appellant No.1-Ram Pal (since deceased), keeping in view the observations made aforesaid.

September 01, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No