

S. No.109

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

CR No.5231 of 2022

Date of Decision: December 01, 2022

Radha Rani

.....Petitioner

Vs.

Chander Shekhar and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ashok Kumar Khunger, Advocate for the petitioner.

DEEPAK GUPTA, J.

Application to bring on record legal representatives of deceased defendant No.2 – Guranditta Mal was dismissed by learned trial Court vide impugned order dated 05.11.2022 (Annexure P1), in civil suit titled Radha Rani Vs. Chander Shekhar and another – CNR No. PBFZE0-00606-2016, against which this revision has been filed.

2. It is revealed that plaintiff – Radha Rani (petitioner) and defendant No.1 – Chander Shekhar (respondent No.1) are children of defendant No.2 – Guranditta Mal. Plaintiff challenged a decree dated 11.08.1990 suffered by defendant No.2 in favour of defendant No.1 on the ground that property in dispute was coparcenary in nature and she had 1/11th share therein. Other legal heirs of Guranditta Mal were not impleaded. Despite being served, defendant No.2 did not contest the suit and was proceeded ex parte on 05.09.2016. Said defendant No.2 later expired on 12.08.2017. Plaintiff moved an application on 3.11.2022 to implead the legal representatives of defendant No.2, when the case reached at the final stage. By observing that during his lifetime, defendant No.2 never applied for setting aside the ex-parte order against him and that application as moved under Order 22 Rule 4 CPC was barred by limitation, the same was dismissed by trial court by way of the impugned order.

3. It is contended by Ld. Counsel that that the impugned order suffers from material irregularity and illegality, as no period of limitation is prescribed to bring on record the legal representatives of deceased-defendant after the amendment of Order 22 Rule 4 CPC by way of the High Court Amendment in 1975.

4. Heard.

5. Order 22 Rule 4 of the Code of Civil Procedure provides the procedure in case of death of one of several defendants or of the sole defendant. It reads as under:-

“4. Procedure in case of death of one of several defendants or of sole defendant.--

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.”

6. By way of an amendment issued vide Gazette notification dated 11.04.1975 sub-rule (3) was substituted by High Court of Punjab & Haryana. Substituted sub-rule (3) is as under:-

“(3) 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 if it had been pronounced before the death took place.”

7. Apart from the substitution of sub-rule (3), by way of the same amendment, sub-rule (4), (5) and (6) were inserted, which are as under:-

“(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 provisions of section (5) of the Limitation Act, 1963 (36 of 1963), shall apply to applications under sub-rule (4).”

8. After the above-said amendment by the High Court of Punjab & Haryana, sub-rule (4), (5) and (6) were inserted by Act No.104 of 1976 w.e.f. 1.2.1977. This reads as under:-

“(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said

defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the [Limitation Act, 1963](#) (36 of 1963) and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the [Limitation Act, 1963](#) (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act, the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.”

9. In **M/s Deepika Industries Vs. Sukha Nand, 1993(3) R.R.R. 415**, it has been held by this Court that whether the application is to implead LR's of the deceased party or to get oneself impleaded as such, the application will be governed by Article 120 of the Limitation Act and therefore, in terms thereof, it has to be filed within 90 days of the death of the deceased plaintiff or defendant, as the case may be. If the application is made after 90 days from the death of the party, it will be liable to be dismissed as barred by time. Reliance was placed upon **Mohan Niranjana Dass Vs. S.G.P. Committee, Amritsar, AIR 1992 SC 492** wherein Hon'ble

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Supreme Court had held that application for impleading LR for party is to be moved within 90 days from the date of death in view of Article 120 of the Limitation Act.

10. In Jinder Kaur and others Vs. Sarabjit Singh Bajaj and others, 2003(2) R.C.R. (Civil) 152, this Court considered the consequence of the amendment of Sub-Rule (3) of Rule 4 and held as under:-

“8. A reading of the above provisions would show that provisions of Order 22 Rule 4 of the Code of Civil Procedure have been amended by the Punjab and Haryana High Court to facilitate the decisions in the suit and to avoid the malady of abatement. The rules contemplate continuation of proceedings and pronouncement of the judgment as if the proceedings have culminated before the death took place. The said amendments are deeming provisions and have to be interpreted keeping in view the intention for amending such rule. Such rules were amended in view of the fact that large number of appeals were dismissed as abated in view of the fact that the plaintiffs or defendants were not brought on record, may be either due to lack of knowledge about the death or of the requirement that legal representatives are required to be impleaded. The consequences were grave and serious which frustrated the claim of the parties. In this view of the matter, the rules were amended.”

11. It is thus clear that sub-rule (3) as amended by the High Court is an enabling provision to facilitate the Court to pronounce the judgment as against the deceased- defendant notwithstanding his death and the said judgment is to have the same effect and force, as if it had been pronounced before the death took place.

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12. Apart from above, sub-rule (4) as inserted by Act 104 of 1976, clearly provides that substituting the legal representatives of any such defendant may be exempted, who has failed to file the written statement or having filed it, to contest the suit.

13. In the present case, defendant No.2 – Guranditta Mal had been proceeded ex parte on 05.09.2016 much prior to his death on 12.08.2017. During his lifetime, he never applied for setting aside the ex parte proceedings. In these circumstances, application moved on 03.11.2022 i.e. more than five years after the death of Guranditta Mal to implead the LRs of said Guranditta Mal, when the case had already reached at the final stage, if allowed, will amount to negate the objective of Order 22 Rule 3 CPC as substituted by the High Court of Punjab & Haryana; and Rule 4 as inserted by Act No.104 of 1976. Besides, application has rightly been held to be barred by limitation.

14. As such, holding this revision to be devoid of any merit, the same is dismissed.

December 01, 2022

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(DEEPAK GUPTA)

JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No