

2023:PHHC:139900

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

CR-6203-2023

Reserved on 02.11.2023

Pronounced on: 06.11.2023

Darbara Singh, deceased through his LR Gurdeep Singh Petitioner

Versus

Som Nath

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. N.C. Kinra, Advocate and
Ms. Apoorva Kinra, Advocate for the petitioner.

Mr. Som Nath, respondent/caveator in person.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 06.07.2023 (Annexure P-1) passed by learned Additional District Judge, Chandigarh in Civil Appeal No.34 of 30.01.2018, titled as *Darbara Singh Versus Som Nath*, whereby the application moved by the petitioner for bringing him on record as legal representative of the deceased father has been dismissed and consequently, the appeal also stood dismissed.

2. Brief facts as culled out from the petition are that the respondent-Som Nath filed a suit for specific performance of agreement to sell dated 19.04.2013 against Darbara Singh (since deceased) with regard to land as mentioned in the plaint. The suit was contested and on the basis of

evidence led, the trial Court decreed the suit in favour of the respondent-plaintiff vide judgment and decree dated 22.11.2017. The defendant-Darbara Singh preferred an appeal against the said judgment and decree. However, during the pendency of appeal, Darbara Singh expired on 15.12.2018. Gurdeep Singh, being son of deceased Darbara Singh, moved an application dated 09.05.2022 (Annexure P-4), for bringing him on record as his legal representative. The said application was contested by the respondent-plaintiff and filed the reply (Annexure P-5). The applicant-Gurdeep Singh also subsequently filed an application for condonation of delay in filing the application for bringing him on record as legal representative of the deceased Darbara Singh (Annexure P-6), which was also contested by the respondent-plaintiff by filing reply (Annexure P-7).

3. Learned counsel for the petitioner has submitted that the application was mainly dismissed on the ground of delay as the limitation to move such application was only 90 days and it cannot be expected that the applicant-Gurdeep Singh (petitioner herein) was not having any knowledge regarding the pendency of the appeal especially when he was residing with his father Darbara Singh (since deceased) at the same address. The petitioner was required to explain delay of each and every day. It is contended that there was no limitation prescribed for filing application for bringing on record the legal representative of deceased. In case ***Ram Phal and others Versus Harbans Lal and others, 2014(69) R.C.R. (Civil) 798***, it has been held by this Court that there is no limitation for bringing on record the legal representatives of the deceased and the suit would not abate.

4. The respondent has appeared in person. He has submitted that the petitioner intentionally did not move an application for bringing him on record as legal representative of the deceased, the appellant before the First Appellate Court, and limitation to implead legal heir of deceased party runs from date of his death. He has placed reliance on the case ***Sadassiva Rauji Gaitonde and others Versus Jose Joaquim Fonseca, 1976 AIR (Goa) 11.***

5. I have heard the submissions of learned counsel for the petitioner, respondent in person and have gone through the file.

6. As per provisions of Order 22 Rule 10-A CPC, it is the duty of the pleader to communicate to a Court of death of party. The said Order 22 Rule 10-A CPC reads as under:-

“10-A. Duty of pleader to communicate to Court death of a party.- Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”

7. In the case in hand, there is nothing on record that the Advocate representing the appellant (since deceased) ever communicated the death of appellant to the Court. Order 22 Rule 11 CPC reads as under:-

“11. Application of Order to appeals. - In the application of this order to appeals, so far as may be, the word “plaintiff” shall be held to include an appellant, the word “defendant” a respondent, and the word “suit” an appeal.”

So, the Rule with regard to bringing on record the legal representative of the plaintiff which includes appellant as per Order 22 Rule 11 of CPC would be applicable.

8. In Order 22 Rule 3(2), this Court has made the following amendment:-

“High Court Amendment-(Punjab, Haryana and Chandigarh). -For existing sub-rule (2) of rule 3, substitute the following:-

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 event shall continue to subsist.”

9. In case ***Ram Phal and others’ case (supra)***, it has been held that since there is an amendment made to Order 22 Rule 3 CPC, limitation period of 90 days would not be applicable. So, the learned appellate Court has wrongly held that the applicant was required to explain delay of each and every day for bringing him on record. The authority in ***Sadassiva Rauji Gaitonde and others’ case (supra)***, as relied on by the respondent, is not applicable in view of the amendment made by this Court.

10. Keeping in view the amendment made and settled principles of law, the learned appellate Court was not justified in dismissing the application for bringing the petitioner on record as legal representative of the deceased appellant-Darbara Singh.

11. Accordingly, the revision petition is allowed. The order dated 06.07.2023 (Annexure P-1) passed by learned Additional District Judge, Chandigarh, is hereby set aside and the petitioner is ordered to be impleaded

as legal representative of the appellant-Darbara Singh (since deceased). The learned appellate Court shall get amended memo and shall proceed with the appeal for its disposal in accordance with law.

12. Parties are directed to appear before the concerned learned Appellate Court on 16.11.2023.

(GURBIR SINGH)
JUDGE

06th November, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No