

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

129

2024:PHHC:004855

CR-6401-2023

Date of decision: 15.01.2024

AZAD SINGH (DECEASED) THROUGH HIS LRS ..Petitioner

Versus

KAMINI AND OTHERS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Yadav, Advocate
for the petitioner.

Mr. Piyush Bansal, Advocate
for respondent No.1 to 3.

ANIL KSHETARPAL, J(Oral)

1. The first appeal filed by the appellant has dismissed upon having been abated on the ground that the application under Order XXII Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') to bring on record the legal representatives of the appellant was filed beyond the prescribed time.

2. It is evident that in this case, Order XXII Rule 3(2) that has been substituted by State of Punjab, Haryana and Chandigarh in the year 1992, is applicable, which is extracted as under:-

“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.”

3. The learned counsel representing the respondent does not dispute the aforesaid position, however, submits that the petitioner's counsel filed an application under Order XXII Rule 2 of the CPC and not Order XXII Rule 3 of the CPC.

4. This Court has considered the submissions of the learned counsel representing the parties.

5. It is a well known legal principle that the rules or procedures are the handmaids of justice. A member serving the Superior Judicial Service in Haryana is expected to at least know that Order XXII Rule 3 of the CPC in the year 1992 was amended by the States of Punjab, Haryana and Union Territory, Chandigarh. This amendment is in force from the last 30 years. Even if the application was inadvertently filed under a wrong provision of law, the Court shall have examined the matter in detail before disposing of the appeal as abated.

6. Keeping in view the aforesaid facts, the impugned order dated 22.09.2023, is set aside.

7. The First Appellate Court is requested to decide the application afresh in accordance with the amendment carried out in Order XXII Rule 3(2) of the CPC.

8. Disposed of accordingly.

9. All the pending miscellaneous applications, if any, are also disposed of.

January 15th, 2024

Ay

(ANIL KSHETARPAL)
JUDGE

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