



In the High Court of Punjab and Haryana at Chandigarh

CR No.6831 of 2023(O&M)

Date of Decision: 05.08.2024

Dilbagh Singh (since deceased) through his LRs

.....Petitioner

Versus

State Bank of India

....Respondent

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Yashpal Thakur, Advocate for the petitioner.

Mr. Anurag Jain, Advocate and

Mr. Ajay Kamboj Gurpreet, Advocate for the respondent.

RITU TAGORE, J.

1. This revision petition, filed under Article 227 of the Constitution of India, challenges the order dated 13.04.2023, passed by learned Civil Judge (Junior Division), Fatehgarh Sahib, whereby petitioner's application, for rejection of the plaint for want of fixing a proper Court fee and for filing a suit against a dead person, has been dismissed.

2. At the outset, learned counsel for the petitioner (represented through LRs of deceased defendant), submits that he restricts his prayer to the issue of non-maintainability of the suit against a dead person.

3. Learned counsel for the petitioner (represented through LRs of deceased defendant) submits that respondent-Bank/plaintiff instituted a suit (Annexure P-1) under Order XXXIV of Code of Civil Procedure, 1908 (in short 'CPC') read with Section 79 of the Negotiable Instruments Act, 1881



and Section 21-A of the Banking Regulation Act, 1949, against Dilbagh Singh, for recovery of Rs.4,78,881/-. During the trial, the petitioner (represented through LR's of deceased defendant), filed an application (Annexure P-2), seeking rejection of the plaint on the ground of affixing insufficient Court fee and for filing a suit against a dead person. It is argued that original defendant - Dilbagh Singh, had already passed away on 13.07.2018 i.e. prior to the institution of the suit on 24.02.2020 against him. Additionally, filing of an application for impleadment of the LR's of deceased Dilbagh Singh (Annexure P-3), by the respondent-Bank/plaintiff, confirms the death of the defendant before the institution of the suit.

4. Learned counsel for the petitioner argues that the learned Trial Court failed to consider the settled position of law that a suit against a dead person is not maintainable and same is a nullity. It is stated that learned Trial Court, erred in allowing the impleadment of the LR's of deceased under the provisions of Order 22 Rule 4 CPC, as the said provisions do not apply in this context. It is urged that facts of the referenced case '**Pankajbhai Rameshbhai Zalavadia Vs. Jethabhai Kalabhai Zalavadiya (Deceased) through LR's and others**', **2018 AIR Supreme Court 490**, are not applicable here, as, unlike the referenced case, where right to sue was available against the other defendants upon the death of one of the defendant, in present case, there was sole defendant and right to sue did not survive on his death. Learned counsel for the petitioner, while relying upon a judgment of this Court in '**Karam Kaur (died) Vs. Dalip Singh (dead) through LR's, 2001 (4) RCR (Civil) 361**', contends that order dated 13.04.2023 is indefensible in the eyes of law and should be set aside, with



further prayer for issuing appropriate directions.

5. Contrarily, learned counsel for the respondent/plaintiff, defended the order stating that same is valid in the eyes of law. Learned counsel submits that the deceased Dilbagh Singh, was the borrower of the respondent-Bank/plaintiff and the legal heirs of deceased – Dilbagh Singh did not inform the Bank of the borrower's death. The Bank filed the suit against the borrower – Dilbagh Singh and upon learning of the defendant/borrower's death, moved an application to substitute the deceased's LRs. This application was allowed vide order dated 05.03.2021. It is stated that order dated 05.03.2021 was never challenged by the legal heirs of the deceased and has attained finality. In these circumstances, it is argued that the application under Order 7 Rule 11 CPC is untenable.

6. Learned counsel further submits that *ratio decidendi* of the decision in **Pankajbhai Rameshbhai Zalavadia's** case (supra) is directly applicable to the facts of the present case. Learned Trial Court, appropriately allowed the substitution of the legal heirs of deceased Dilbagh, adhering to the principles established in the case (supra). It is argued that citing an incorrect provision of law cannot serve as a basis for undermining the right of a party. It is asserted that learned Trial Court, rightly dismissed the application under Order 7 Rule 11 CPC. Based on these contentions, a prayer is made to dismiss the petition for lack of merits.

7. I have heard learned counsel for the parties, perused the paper-book and the documents annexed.

8. It is a matter of record that respondent-Bank/plaintiff filed a suit for recovery of Rs.4,78,881/- against Dilbagh Singh (Annexure P-1). The



report made on the summons revealed the demise of Dilbagh Singh. The respondent-Bank subsequently filed an application dated 04.03.2021 (Annexure P-3) for bringing on record LRs of deceased, which was allowed vide order dated 05.03.2021. The petitioner (represented through LRs of deceased defendant), thereafter, on 05.08.2022 filed an application (Annexure P-2) under Order 7 Rule 11 CPC for rejection of plaint for want of proper Court fee and filing a suit against a dead person. The said application was dismissed by the learned Trial Court by giving the detailed reasons. Learned counsel for the petitioner could not refute that order dated 05.03.2021 allowing the application for impleadment of the legal heirs of deceased Dilbagh Singh was not contested by the petitioner and has thus attained finality.

9. In **Pankajbhai Rameshbhai Zalavadia's** case (supra), the question arose before Hon'ble the Supreme Court, is as under:-

“5. The only question which is to be decided in this appeal is, whether the legal representatives of one of the defendants can be impleaded under Order 1 Rule 10 of the Code where such defendant expired prior to the filing of the suit, particularly when the application filed by the plaintiff to bring the legal representatives of the deceased on record under Order 22 Rule 4 of the Code was dismissed earlier as not maintainable.”

10. While answering the aforesaid question, Hon'ble the Supreme Court has held to the following effect:-

“14. In the matter on hand, though the trial court had rightly dismissed the application under Order 22, Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial Court at that



point of time itself could have treated the said application filed under Order 22, Rule 4 of the Code as one filed under Order 1, Rule 10 of the CPC, in order to do justice between the parties. Merely because of the non-mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the Courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add any one as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1, Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice. The expression “to settle all questions involved” used in Order 1, Rule 10 (2) of the Code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject matter thereof. The Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The Court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person who has purchased the property and whose rights are likely to be affected pursuant to the judgment in the suit is a necessary party, and he has to be added. If such purchaser has expired, his legal representatives are necessary parties. In the



matter on hand, since the purchaser of the suit property, i.e., defendant no.7 has expired prior to the filing of the suit, his legal representatives ought to have been arrayed as parties in the suit while presenting the plaint. As such impleadment was not made at the time of filing of the plaint in view of the fact that the plaintiff did not know about the death of the purchaser, he cannot be non-suited merely because of his ignorance of the said fact. To do justice between the parties and as the legal representatives of the purchaser of the suit property are necessary parties, they have to be impleaded under Order 1 Rule 10 of the Code, inasmuch as the application under Order 22 Rule 4 of the Code was not maintainable.

As mentioned supra, it is only if a defendant dies during the pendency of the suit that the provisions of Order 22, Rule 4 of the Code can be invoked. Since one of the defendants i.e. defendant No.7 has expired prior to the filing of the suit, there is no legal impediment in impleading the legal representatives of the deceased defendant No.7 under Order 1, Rule 10 of the Code, for the simple reason that the plaintiff in any case could have instituted a fresh suit against these legal representatives on the date he moved an application for making them parties, subject of course to the law of limitation. Normally, if the plaintiff had known about the death of one of the defendants at the time of institution of the suit, he would have filed a suit in the first instance against his heirs or legal representatives. The difficulty that the High Court experienced in granting the application filed by the plaintiff under Order 1, Rule 10 of the Code discloses, with great respect, a hyper-technical approach which may result in the miscarriage of justice. As the heirs of the deceased defendant no.7 were the persons with vital interest in the outcome of the suit, such applications have to be approached keeping in mind that the Courts are meant to do substantial justice between the parties and that technical rules or



procedures should not be given precedence over doing substantial justice. Undoubtedly, justice according to the law does not merely mean technical justice but means that law is to be administered to advance justice.

15. Having regard to the totality of the narration made supra, there is no bar for filing the application under Order 1 Rule 10, even when the application under Order 22, Rule 4 of the Code was dismissed as not maintainable under the facts of the case. The legal heirs of the deceased person in such a matter can be added in the array of parties under Order 1, Rule 10 of the Code read with Section 151 of the Code subject to the plea of limitation as contemplated under Order 7, Rule 6 of the Code and Section 21 of the Limitation Act, to be decided during the course of trial.”

11. In the judgment, Hon’ble the Supreme Court of India has established the principle that when the Court determines that presence of the parties is essential for determination of the controversy, they should be brought on record by exercising the power under Order 1 Rule 10 CPC. In the present case, the presence of the legal heirs of deceased Dilbagh Singh is necessary for a comprehensive determination of the suit brought by the Bank against the borrower. Consequently, this Court is of the considered opinion that learned Trial Court has properly exercised its discretion by bringing on record the LRs of deceased Dilbagh Singh by allowing the application. Furthermore, while the citation of an incorrect provision of law may not invalidate the rights of the parties, if those are otherwise available under the law. The order of bringing on record the LRs of deceased Dilbagh Singh has attained finality as it has not been contested.

12. As a sequel to the foregoing discussion, this Court does not find



any illegality, irregularity, infirmity or perversity in the impugned order, warranting any intervention by this Court.

- 13. The revision petition stands dismissed.
- 14. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

AUGUST 05, 2024
d.gulati

(RITU TAGORE)
JUDGE

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