Supreme Court of India
Union Of India vs Ram Charan & Others on 30 April, 1963
Equivalent citations: 1964 AIR 215, 1964 SCR (3) 467
Author: R Dayal
Bench: Dayal, Raghubar

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
RAM CHARAN & OTHERS

DATE OF JUDGMENT:
30/04/1963

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
SUBBARAO, K.
MUDHOLKAR, J.R.

CITATION:
1964 AIR 215 1964 SCR (3) 467
CITATOR INFO :
R 1983 SC1202 (5)

ACT:
Abatement of appeal-Death of respondent-Application by appellant to bring legal representatives of respondent on record Application filed after lapse of three months after death-What is "sufficient cause"-Limitation for application to set aside abatement starts from date of death and not from date of appellant' knowledge of death--Scope of s. 151 C.P.C.-India Limitation Act, 1908 (9 of 1908) Art, 171- Code of Civil Procedure 1908 (Acl. 5 of 1908), 0.22, s. 151, rr. 4,9,11.

HEADNOTE:
Ram Charan obtained a money decree against the Union of India. An appeal was filed against that decree in the High Court. Ram Charan respondent died on july 21, 1957. On March 18, 1958, an application was filed in the High Court under 0.22, R .4 read with s. 151 of the Code by Civil Procedure stating that the respondent had died on July 21, 1957 and the Divisional Engineer, Telegraphs, learnt of his death on February 3, 1958 and the deceased had left his widow and an adopted son as his legal representatives. A

prayer was made to bring the legal respresentatives of the deceased on record. The High Court dismissed the application on the ground that the appellant had failed to show sufficient cause for not bringing the legal representatives of the deceased on record within time. The appeal was also dismissed. In the appeal before this Court, it was contended on behalf of the appellant that the mere ignorance of death of the respondent was sufficient cause for the appellant's inability to apply for the impleading of legal representatives within time unless the appellant was guilty of some negligence or some act or omission which led to delay in his making the application, that once the respondent was served no duty was cast on the appellant to make further enquiries about the state of health of the respondent, that expresssion sufficient cause' should be liberally construed in order to advance the cause of justice, that the Court itself had inherent power to add legal representatives to do justice to the party and that the High Court misapplied the decision of the Full Bench
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in Firm Dittu Ram Eyedan v. Om Press Co. Ltd. to the facts of the present case.

Held that limitation for an application to set aside the abatement of an appeal starts on the death of the respondent and not from the date of the appellant's knowledge thereof.

Held also that the Court is not to invoke its inherent powers under s. 151 C.P.C. for the purpose of impleading legal representatives of a deceased respondent, if the suit had abated on account of the appellant not taking appropriate steps within time to bring legal representatives of the deceased on the record and when its application for setting aside abatement was not allowed on account of its failure to satisfy the court that there was sufficient cause for not impleading the legal representatives of the deceased in time and for not applying for setting aside of the abatement within time.

Held also that the expression sufficient cause' is not to be liberally construed either because the party in default was the Government or because the question arose in connection with the impleading of the legal representatives of the deceased respondent. The Court should not readily accept whatever is alleged to explain away the default. The delay in making the application should not be for reasons which indicate the negligence of the party making the application in not taking certain steps which he could have and should have taken The court has to be satisfied that there were certain valid reasons for the applicant not knowing the death within a reasonable time. The bare statement of the applicant is not enough.

Firm Dittu Ram Eyedan v. Om Press Co. Ltd. (1960) 1 I.L.R- Punjab. 935 (F.B.), State of Punjab v. Nathu Ram [1962] 2 SC R. 636 and Jhanda Singh v. Gurmukh Singh

C. A. No. 344 of 1936 dated 10.4.62, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1115 of 1962.

Appeals by special leave from the judgments and orders dated February 16,26, 1960, of the Punjab High Court in Civil Misc. No. 1212-C of 1959 and Regular First Appeal No. 44 of 1955.

D.R. Prem and P.D. Menon, for the appellant.

Veda Vyasa, K. K. Jain, for P.C. Khanna, for respondent.

1963. April 30. The judgment of the Court was delivered by RAGHUBAR DAYAL J.-The facts leading to this appeal, by special leave, against the orders of the high Court of Punjab are these. Ram Charan obtained a decree for money against the Unioun of India on January 6, 1955. The Union of India presented an appeal on April 6, 1955, in the High Court. Ram Charan, the sole respondent, filed a cross- objection on July 31, 1955. On February 6, 1956 the High Court passed an order in connection with the surety bond. Ram Charan was represented at the proceedings. Ram Charan died on July 91, 1957.

On March 18, 1958 an application was presented to the High Court on behalf of the appellant under O. XXII, r. 4, read with s. 151, Code of Civil Procedure, stating that Ram Charan died on July 21, 1937, that the Divisional Engineer, Telegraphs, Ambala Cantonment, learnt of his death on February 3, 1958, and that the deceased had left as his legal representatives, an adopted son and a widow. It was prayed that these legal representatives be brought on record in the place of the deceased respondent. The affidavit filed in support of this application did not convey any further information and it was solemnly affirmed by the dependent that the averments in the -affidavit were true to his belief The deponent was no other than the Divisional Engineer, Telegraphs, Ambala Cantonment.

On May 13, 1958, the widow of Ram Charan applied that she alone was the legal representative of Ram Charan under a will and that the alleged adopted son was not the legal representative. The appellant's application for bringing on record the legal representatives of the deceased Ram Charan came up for hearing on May 14, 1958. The Court ordered the application to be heard at the time of the hearing of the appeal as it was pointed out that there was a difference of opinion in the Court as to whether limitation under 0. XXII of the Code started from the date of death or from the date of knowledge of death. Subsequently, on an application on behalf of the legal representatives, it was ordered that the question of abatement be decided first and thereafter the printing of the record be taken on hand. The application for substitution came up for decision on February 16, 1960. It was dismissed, the Court holding that the Union of India had failed to show that it was prevented from any sufficient cause from continuing the appeal. On February 26, 1960, the appeal itself was dismissed as having abated.

On May 14, 1960, an application for leave to appeal to the Supreme Court was presented to the High Court. The heading of the application was described to be one for leave to the Supreme Court from the judgment dated February 16, 1960, in C.M. No. 1212/C of 1959 in R.F.A. No. 44 of 1955. This application was rejected on May 17, 1960. Thereafter, an application for special leave was filed in this Court. Special leave was prayed for appealing from the judgment of the High Court of Punjab in R.F.A.No.44 of 1955 and C.M. No. 1212-C/59 dated February 16/26 of 1960. The order granting special leave said:

> "That special leave be and is hereby granted to the petitioner to appeal to this Court from the judgment and order dated 16th day of February, 1960 and 26th day of February, 1960 of the Punjab High Court in Civil Miscellaneous No. 1212-C of 1959 and Regular First Appeal No. 44 of 1955."

A preliminary objection was taken to the effect that the appellant having not applied to the High Court for leave to appeal against the order dated February 26, 1960 in Regular First Appeal, that order had become final and special leave could not be asked for from this Court in view of Order XIII, r.2 of the Supreme Court Rules, 1950, the rule being:

> "Where an appeal lies to the Supreme Court on a certificate issued by the High Court or other tribunal, no application to the Supreme Court for special leave to appeal shall be entertained unless the High Court or tribunal concerned has first been moved and it has refused to grant the certificate."

We do not see any force in this objection and reject it. The application for leave to appeal, though described as one against the judgment in the miscellaneous case and not against the order in the regular appeal, stated in paragraph I that the regular first appeal had been ordered to have abated and in paragraph 3 that it was a fit case in which necessary certificate for filing an appeal against the judgment passed by the Court in regular first appeal No. 44 of 1955 be granted. Both these statements refer to the proceedings in connection with the regular first appeal and not of the order on the miscellaneous application for substitution. Ground No. 2 referred to those proceedings. The application, therefore, was really an application for leave to appeal against both the orders.

The High Court does appear to have construed that application in this manner. Its order dated May 17, 1960 stated :

> "The appeal was decided as having abated because the appellant failed to show sufficient cause for not bringing the legal representatives of the deceased respondent within time."

To appreciate the real contention between the parties before us, we may now give in brief, the reasons for the order of the High Court dated February 16, 1960. It may be pointed out that in the narration of facts the High Court stated that the application dated March 17, 1958, was filed under O. XXII, rr. 4 and 9 read with s. 151 of the Code. ' he application, as printed on the record, did not purport to be under r. 9 of O. XXII, C.P.C. There is not a word in the application that the appeal had

abated and that the abatement be set aside The error in this respect seemed to have further led to the error in stating that the reason for the delay given in the application was that the Divisional Engineer, Telegraphs, came to know about Ram Charan's death on February 3, 1958, there being no reason mentioned in the application. It was just stated as a matter of fact that the Engineer had come to know of the death on February 3, 1958. The order states that some application was presented by the Union of India on May 14, and that it was stated therein that the interval between February 3 and March 17. 1,958, was spent in collecting information about the legal representatives of the deceased. This application, however, is not printed in the paper book.

The High Court relied on the Full Bench case of its Court reported in Firm Dittu Ram Eyedan v. Om Press Co. Ltd., (1), which held that ignorance of the death of the defendant was not a sufficient cause for setting aside the abatement when an application to bring the legal representatives of' the deceased on the record was made after the expiry of the period of limitation, as the law imposed an obligation on the person applying for bringing the legal representatives of the deceased on the record and he had, therefore, to show absence of want of care. The (1) (1960) 1 1. L. R. Punj 935 High Court held that the Union of India did not state either in its application dated March 17, 1958, or in the other application dated May 14, 1958, that the Government had not been careless in the matter and had been vigilant in keeping itself informed regarding the whereabouts of Ram Charan and that it would not have been difficult for the Government to have come to know of Ram Charan's death, who lived in Ambala Cantonment, to which place the appeal related.

The contentions raised for the appellant in this Court are :

> (1) That mere ignorance of death of the res- pondent was sufficient cause for the appel- lant's inability to apply for the impleading of the legal representatives within time, unless it be that the appellant was guilty of some negligence or some act or omission which led to the delay in his making the application.
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> (2) Once the respondent is served in the first appeal, no duty is cast on the appellant to make regular enquiries about the state of health of the respondent.
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> (3) The expression 'sufficient cause' should be liberally construed in order to advance the cause of justice.
>
> (4) The Court itself' has inherent power to add legal representatives to do full justice to the party.
>
> (5) The High Court misapplied the decision of the Full Bench of its Court to the facts of the present case.

We may say at once that there is no force in the fourth point. The Court is not to invoke its inherent powers under s. 151, C.P.C. for the purposes of impleading the legal representatives of a deceased respondent, if the suit had abated on account of the appellant not taking appropriate steps within time to bring the legal representatives of the deceased party on the record and when its application

for setting aside the abatement is not allowed on account of its failure to satisfy the Court that there was sufficient cause for not impleading the legal representatives of the deceased in time and for not applying for the setting aside of the abatement within time.

There is no question of construing the expression 'sufficient cause' liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This, however, does not mean that the, Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement.

It is true, as contended, that it is no duty of the appellant to make regular enquiries from time to time about the health or existence of the opposite party, but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself, justify his application for setting aside the abatement. That is not the law Rule 9 of O. XXII of the Code requires the plaintiff to prove that he was prevented by any sufficient cause from continuing the suit. The mere allegation about his not coming to know of the death of the opposite party is not sufficient. He had to state reasons which, according to him, led to his not knowing of the death of the defendant within reasonable time and to establish those reasons to the satisfaction of the Court, specially when the correctness of those reasons is challenged by the legal representatives of the deceased who have secured a valuable right on the abatement of the suit.

It is not necessary to consider whether the High Court applied its earlier Full Bench decision correctly or not when we are to decide the main question urged in this appeal and that being the first contention Rules 3 and 4 of O. XXII, C.P.C. lay down respectively the procedure to be followed in case of death of one of several plaintiffs when the right to sue does not survive to the surviving plaintiffs alone or that of the sole plaintiff when the right to sue survives or of the death of one of several defendants or of sole defendant in similar circumstances. The procedure requires an application for the making of the legal representatives of the deceased plaintiff or defendant a party to the suit. It does not say who is to present the application. Ordinarily it would be the plaintiff, as by the abatement of the suit the defendant stands to gain. However, an application is necessary to be made for the purpose. If no such application is made within the time allowed by law, the suit abates to far as the deceased Plaintiff is concerned or as against the deceased defendant. The effect of such an abatement on the suit of the surviving plaintiffs or the suit against the surviving defendants depends on other considerations as held by this Court in State of Punjab v. Nathu Ram (1) and Jhanda Singh v. Gurmukh Singh (2) . Any way, that question does not arise in this case as the sole

respondent had died.

It may be mentioned that in view of r. 11 of O.XXII, the words 'plaintiff', 'defendant' and 'suit'in that Order include 'appellant', 'respondent' and`appeal' respectively.

The consequence of the abatement of the suit against the defendant is that no fresh suit can be brought on the same cause of action. Sub-rule (1) of r. 9 bars a fresh suit. The only remedy open to the plaintiff or the person claiming to be the legal representative of the deceased plaintiff is to get the abatement of the suit set aside and this he can do by making an application for that purpose within time. The Court will set aside the abatement if it is proved that the applicant was prevented by any sufficient cause from continuing the suit. This means that the applicant had to allege and establish facts which, in the view of the Court, be a sufficient reason for his not making the application for bringing on record the legal representatives of the deceased within time. If no such facts are alleged,. none can be established and, in that case the Court cannot set aside the abatement of the suit unless the very circumstances of the case make it so obvious that the Court be in a position to hold that there was sufficient cause for the applicants not continuing the suit by taking necessary steps within the period of limitation. Such would be a very rare case. This means that the bare statement of the applicant that he came to know of the death of the other party more than three months after the death will not (1) [1962] 2 S. C. R, 636.

(2) C. A. No. 344 of 1956 decided on April 10, 1962.

ordinarily be sufficient for the Court's holding that the applicant had sufficient cause for not impleading the legal representatives within time. If the mere fact that the applicant had known of the death belatedly was sufficient for the Court to set aside the abatement, the legislature would have. expressed itself differently and would not have required the applicant to prove that he was prevented by any sufficient cause from continuing the suit. The period of limitation prescribed for making such an application is three months, under Art. 171 of the First Schedule to the Limitation Act. This is a sufficiently long period and appears to have been fixed by the legislature on the expectancy that ordinarily the plaintiff would be able to learn of the death of the defendant and of' the persons who are his legal representatives within that period. The legislature might have expected that ordinarily the interval between two successive hearings of a suit will be much within three months and the absence of any defendant within that period at a certain hearing may be accounted by his counsel or some relation to be due to his death or may make the plaintiff inquisitive about the reasons for the other party's absence. The legislature further seems to have taken into account that there may be cases where the plaintiff may not know of the death of the defendant as ordinarily expected and, therefore, not only provided a further period of two months under art. 176 for an application to set aside the abatement of the suit but also made the provisions of s. 5 of the Limitation Act applicable to such applications. Thus the plaintiff is allowed sufficient time to make an application to set aside the abatement which, if exceeding five months, be considered justified by the Court in the proved circumstances of the case. It would be futile to lay down precisely as to what considerations would constitute 'sufficient cause' for setting aside the abatement or for the plaintiff's not applying to bring the legal representatives of the deceased defendant on the record or would be held to be sufficient cause for not making an application to set aside the abatement within the time

prescribed. But it can be said that the delay in the making of such applications should not be for reasons which indicate the plaintiff's negligence in not taking certain steps which he could have and should have taken. What would be such necessary steps would again depend on the circumstances of a particular case and each case will have to be decided by the Court on the facts and circumstances of the case. Any statement of illustrative circumstances or facts can tend to be a curb on the free exercise of its mind by the Court in determining whether the facts and circumstances of a particular case amount to `sufficient cause' or not Courts have to use their discretion in the matter soundly in the interests of justice.

It will serve no useful purpose to refer to the cases relied on for the appellant in support of its contention that the appellant's ignorance of the death of the respondent is sufficient cause for allowing its application for the setting aside of the abatement and that in any case it would be sufficient cause if its ignorance had not been due to its culpable negligence or mala fides. We have shown above that the mere statement that the appellant was ignorant of the death of the respondent, cannot be sufficient and that it is for the appellant, in the first instance, to allege why he did not know of the death of the respondent earlier or why he could not know about it despite his efforts, if he had made any efforts on having some cause to apprehend that the respondent might have died. The correctness of his reasons can be challenged by the other party. The Court will then decide how far those reasons have been established and suffice to hold that the appellant had sufficient cause for not making an application to bring the legal representatives of the deceased respondent earlier on the record.

In the present case, the appellant had adopted a very wrong attitude from the very beginning. In its application dated March 17, it merely said that Ram Charan died on July 21, 1957, and that Shri Bhatia, the Divisional Engineer, Telegraphs, Ambala Cantonment, learnt about it on February 3, 1958. Shri Bhatia did not say anything more in his affidavit and did not verify it on the basis of his personal knowledge. Why he did not do so is difficult to imagine if. he came to know of the death on February 3, 1958. He was the best person to say that this statement was true to his knowledge, rather than true to his belief. Further, it appears from the judgment of the High Court that no further information was conveyed in the application dated May 13, 1958 which is not on the record. The most damaging thing for the appellant is that the application came up for bearing before the learned Single judge and at that time the stand taken by it was that limitation for such an application starts not from the date of death of the respondent but from the date of the appellant's knowledge of the death of the respondent. The appellant's case seems to have been that no abatement had actually taken place as the limitation started from February 3, 1958, when the appellant's officer knew of the death of the respondent and the application was made within 3 months of that date. It appears to be due to such an attitude of the appellant that the application dated March 17, 1958 purported to be simply under r. 4 O. XXII and did not purport to be under r. 9 of the said Order as well and that no specific prayer was made for setting aside the abatement. The limitation for an application to set aside abatement of a suit does start on the death of the deceased respondent. Article 171, First Schedule to the Limitation Act provides that. It does not provide the limitation to start from the date of the appellant's knowledge thereof. The stand taken by the appellant was absolutely unjustified and betrayed complete lack of knowledge of the simple provision of the Limitation Act. In these circumstances, the High Court cannot be said to have taken

an erroneous view about the appellant's not establishing sufficient ground for not making an application to bring on record the representatives of the deceased respondent within time or for not making an application to set aside the abatement within time.

We, therefore, see no force in this appeal and dismiss it with costs.

Appeal dismissed.