

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

I.A.Nos.1 and 2 of 2024

in

S.A.No.1358 of 2008

ORDER:

Heard Sri Butta Vijaya Bhaskar, the learned counsel for petitioner and Sri N.Sriram Murthy, the learned counsel for respondents.

2. Sri Kakumanu Hanumantha Rao is the sole appellant in S.A.No.1358 of 2008. He was the plaintiff in the suit and he lost his cause in both the Courts below and came up with this appeal under Section 100 C.P.C. During the pendency of the appeal, he died on 06.10.2021. It is undisputed that the cause of action survives. In such circumstances, his son Sri Kakumanu Balaji filed I.A.No.2 of 2024 under Order XXII Rule 3 C.P.C. seeking his impleadment as legal representative of the deceased sole appellant. He filed this application on 15.11.2021. In terms of Article 120 of the Schedule of the Limitation Act, 1963 read with Order XXII Rule 3 C.P.C., on the death of the appellant/plaintiff an application for impleadment of legal representative is to be filed within 90 days from the date of death of the appellant. This I.A.No.2 of 2024 was filed within that stipulated period. However, after the presentation of this I.A.No.2 of 2024, it was returned by the Registry for complying with certain objections which include notice to respondents. 10 days time was granted for complying with the objections. The application was not represented within

the time prescribed by the Court. There was delay of 751 days in representing the application and therefore seeking condonation of delay I.A.No.1 of 2024 was filed. Respondents filed counter affidavits wherein they sought dismissal of the applications.

3. Sri N.Sriram Murthy, the learned counsel for respondents argued that by virtue of delay in representing the application, the limitation period of 90 days prescribed in Article 120 of the Schedule of the Limitation Act stood expired and consequently the appeal stood abated. The abatement can be set aside only on a separate application filed within 60 days in terms of Article 121 of the Schedule of the Limitation Act and any further delay could be considered on showing sufficient cause by filing an application under Section 5 of the Limitation Act, 1963. However, in the case at hand, the petitioner failed to move such applications for setting aside abatement and for condonation of delay in filing an application to set aside abatement and therefore the present applications shall be dismissed.

4. Learned counsel for respondents cited **Balwant Singh v. Jagdish Singh**¹. Their Lordships explained the law stating that failure to bring legal representatives within time would result in automatic abatement and no particular order of the Court is required in that regard. Their Lordships further explained doctrine concerning sufficient cause as available in Order XXII Rule 9 C.P.C. and Section 5 of the Limitation Act and held that if the

¹ (2010) 8 SCC 685

delay is directly a result of negligence, default or inaction of the party, the delay cannot be condoned. An application belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record should be rejected unless sufficient cause is shown for condonation of delay. It is based on this ruling, the learned counsel prays this Court to dismiss the applications.

5. As against that, Sri Butta Vijaya Bhaskar, the learned counsel for petitioner contends that the proposed legal representative was vigilant enough and the application to bring him as legal representative and array him as second appellant and permit him to pursue the litigation was filed within the time prescribed and therefore, the question of abatement does not arise and consequently, the question of any delay and its condonation also do not arise and therefore, the arguments advanced by the respondents have no place in this case. Learned counsel further submits that in fact he also filed applications to set aside abatement and to condone delay in filing such applications, but the Registry returned them on the premise that the application to implead legal representative was filed within time and therefore, how such applications were maintainable. Learned counsel also argued that an application to implead legal representative if considered and allowed would also enable the Court to set aside abatement, if any, without there being separate application in that regard. In these

circumstances, learned counsel seeks to allow the applications filed by the legal representative.

6. Having considered the facts on record and the rival submissions of the learned counsel on both sides, the following aspects are to be stated:

As a matter of principle, it has to be stated that a simple prayer for bringing legal representatives on record without specifically praying for setting aside of abatement is maintainable vide ***Mithailal Dalsangar Singh v. Annabai Devram Kini***². In the case at hand, within the prescribed 90 days time I.A.No.2 of 2024 was filed praying for impleadment of legal representative of the deceased sole appellant. The purport of Section 3 of the Limitation Act, 1963 is that when once application is made within the prescribed time, the limitation stops running. Thus, on presenting I.A.No.2 of 2024 before the proper officer of this Court, running of period of limitation stood arrested. Therefore, it cannot be said that no application for impleading legal representative was available and the appeal stood abated on the ground that the application for bringing legal representative on record was returned with certain objections by the office of the Court. Therefore, there is no merit in the contentions raised by the learned counsel for respondents in this regard.

7. There is certainly a long delay of 751 days in representing I.A.No.2 of 2024. In the sworn affidavit filed by the petitioner, it is

stated that he had earlier engaged a counsel through whom I.A.No.2 of 2024 was filed within time and on its return by the office, the advocate's clerk took return of it. The clerk of the previous counsel did not pursue the matter further and thereafter the petitioner engaged a new counsel on whose verification he had come to know about the return of the said application and on noticing it the objections were complied with and the application was represented and the delay occurred in that regard and therefore, I.A.No.1 of 2024 is required to be allowed. In the counter affidavit these facts are questioned saying that they are vague lacking in details.

8. This Court has considered the material papers. It is seen that I.A.No.2 of 2024 filed under Order XXII Rule 3 C.P.C. was filed by a learned counsel. During subsequent period another counsel was engaged and through the new counsel I.A.No.1 of 2024 to condone the delay in representation was filed. Thus, change of a counsel is a fact. A litigant pursuing a matter at High Court could only contact his counsel and inform him the facts and authorizes him to file necessary applications. In the case at hand, the proposed legal representative did the same with his earlier counsel. The fact that I.A.No.2 of 2024 was returned with office objection is an admitted fact. The fact that it was represented with delay by a new counsel is also a fact. Thus, true facts are stated by the petitioner. He did what all he could do and what all that was expected of a common prudent person. In

² (2003) 10 SCC 691

that view of the matter, he had properly explained the delay in representation. Therefore, I.A.No.1 of 2024 shall be allowed.

9. The death of the sole appellant and the relationship between the proposed legal representative and the deceased sole appellant are not disputed by the respondents. Therefore, the petitioner - Sri Kakumanu Balaji shall be recorded as legal representative of the deceased sole appellant – Sri Kakumanu Hanumantha Rao. Consequently, I.A.No.2 of 2024 shall be allowed.

10. In the result, both I.A.No.1 of 2024 and I.A.No.2 of 2024 are allowed. Registry is directed to carry out necessary amendments in the appeal papers.

Dr. V.R.K.KRUPA SAGAR, J

Date: 18.06.2024
lvd

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