

Govind Rao and Another

Vs

Mahadev

Civil Appeal No. 1496 of 1969

(V.R. Krishna Iyer, N.L. Untwalia JJ)

05.04.1976

JUDGMENT

KRISHNA IYER, J. -

1. Two appellants filed the present appeal which according to the respondent, has abated. The second appellant admittedly died on October 7, 1974, but 90 days passed and thereafter the 60 days limited by the law also passed without any application for setting aside the abatement. The first appellant came up with an application on March 31, 1975 for setting aside the abatement but he was 85 days beyond the date on which abatement took place, and 25 days beyond the date limited by law for moving the court to set aside the abatement. This delay of 60 days plus 25 days has to be explained by the first appellant and he has to make out sufficient cause as to why he could not come to court in time.
2. The parties are close relations and it is admitted that the first appellant was present for the funeral of the second appellant. What is more, the respondent had filed an application to declare that the appeal had abated as early as February 8, 1975 and still no application was filed by the first appellant for setting aside the abatement in time.
3. We have heard long arguments from both the appellant petitioner and the respondent. Two points were urged by Mr. Lokur in support of his case that the abatement must be set aside. Firstly, he argued that his client was nearly 80 years old and his mental condition, as proved by the certificate produced subsequently, was such that he suffered from loss of memory, listlessness and loneliness, his sons being away from him. The second point urged was that the decree was divisible and that, the worst coming to the worst, the award in so far as the second appellant was concerned - the appeal relates to the setting aside of the award - was divisible and the first appellant's appeal must be treated as still surviving.
4. We see no merit in either point. The medical certificate is not convincing and an overall view of the facts and the close relationship of the parties and the circumstance that the first appellant has two adult sons satisfies us that there is no sufficient cause for condonation of the delay or for setting aside the abatement.
5. We do not understand how the award could be treated as severable or divisible. It is an integrated award for partition, among various members of the family and it is not possible to split it up into various separate awards. That point also fails.
6. In the result, the petitions for condonation of delay and for setting aside the abatement stand

dismissed without costs.

7. We further record that having regard to the close relationship between the parties, Shri Gambhir, advocate for the respondent, states that his client will not enforce that portion of the decree which relates to the costs awarded in his favour. This means that the parties will bear their costs throughout in the suit and the appeal. Subject to this modification, the petitions and the appeal are dismissed. No costs.

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