

Balram and Others

Vs

III Rd Additional District Judge and Another

Civil Appeal No. 3952 of 1983

(R. S. Pathak, Ranganath Misra JJ)

12.04.1983

JUDGMENT

RANGANATH MISRA, J-

1. This appeal by special leave seeks to assail the decision of the Allahabad High Court in a proceeding under Article 226 of the constitution refusing to quash an order of the III Additional District Judge, Kanpur, holding that Ceiling on Land Holding Act, 1960 had abated for non-substitution of the sole appellant's legal representatives.
2. The ceiling appeal in question had been carried by one Rameshwar and during its pendency the sole appellant died on January 9, 1980. Balram, Ram Bahadur and Jugal Kishore who are the three sons of Rameshwar moved the appellate court for substitution of their names as legal representatives in place of Rameshwar on October 25 1980. They applied for setting aside of abatement and condonation of delay. The Additional District Judge took the view that there was no sufficient cause for condonation of delay and good reasons had not been shown for vacating abatement. Accordingly the appeal was dismissed. And application under Article 226 was made before the Allahabad High court for quashing of the appellate order. It was contended that there was no period of limitation prescribed in respect of proceedings under U. P. Imposition of Ceiling on Land Holdings Act, 1960 ('Act' for short) for applying for substitution, nor was there any period prescribed in Rule 3 of Order 22 of the Code of Civil Procedure ('Code' for short) which became applicable in view of Section 38 of the Act. Therefore, on the expiry of 90 days from the date of death of Rameshwar no abatement set in and the application for substitution made on October 25, 1980 could not have been rejected as being barred by limitation. There High Court referred to Section 38 (1) of the Act and to Rules 3, 9 and 11 of Order 22 of the Code and held the Article 120 of the First Schedule to the Limitation Act, 1963 was applicable and the petition for substitution should have been filed within 90 days from the date of death. The writ application was, therefore, dismissed.
3. The decision of the Allahabad High Court is assailed before this court. When on the special leave petition notice was given it was indicated that the case would be disposed of on merits. the respondents have, however, not appeared to contest.
4. Mr. Sen appearing in support of the appeal says that Section 38 (1) of the Act makes it clear that the procedure in the Code has been made applicable for hearing and disposal of appeals. Under section 42 of the Act, Sections 4, 5 and 12 of the Limitation Act, 1963, have bend made applicable to proceedings including appeals under the Act. According to Mr. Sen, in view of the provisions in Sections 38 and 42 of the Act the appellate authority and the High Court should have accepted the contention of the appellants the code was applied only for the disposal of appeals and the provisions

of the Limitation Act excepting Section 4, 5 and 12 were not applicable to proceedings under the Act.

5. Section 38 (1) of the Act provides :

In hearing and deciding an appeal under this Act, the appellate court shall have all the powers and the privileges of a civil court and follow the procedure for the hearing and disposal of appeals laid down in the code of Civil Procedure, 1908.

6. Under the Code when death occurs at an appellate stage, substitution is effected in accordance with the procedure laid down in Order 22. In terms of sub-section (1) of Section 38 of the Act death occurred of one of the parties at the appellate stage of a Ceiling Appeal, substitution had also to be made according to the procedure laid down Order 22 of the Code. Rule 3 of Order 22 of the Code provides :

(1) where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or all sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representatives of the deceased plaintiff to be made a party and shall proceed with the suit.

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Rule 11 of Order 22 of the Code indicates that the provisions of that Order do apply to appeals.

7. There is another aspect which militates against Mr. Sen's argument. Sub-rule (2) of Rule 3 of that Order provides

Where within the time limited by law no application is made under sub-rule [1] the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

Obviously, time has been limited by law in Article 120 of the First Schedule to the Limitation Act to which we shall presently refer.

8. Article 120 of First Schedule to the Limitation Act provides that an application under the Code to have the legal representatives of the deceased appellant made a party has to be made within 90 days from the date of death of the appellant and Article 121 provides 60 days' period for the application for an order to set aside abatement from the date of abatement. It is not disputed that the application for substitution of the legal representatives of Rameshwar when made was beyond 150 days from the date of his death. If the Code and the Limitation Act applied at the time when the application for substitution, setting aside of abatement and condonation of delay in terms of Rule 9 (3) of Order 22 of the Code. Whether there was sufficient cause for the delay to be condoned and for abatement to be vacated were matters for the appellate court and Mr. Sen has rightly not canvassed before us that discretion which vested in the appellate court has not been properly exercised. The sole ground pressed before us, as we have already stated, is as to whether as an appeal under the Act the provisions of the Code and the Limitation Act referred to above would apply. There is little room to dispute that if Order 22 of the Code applies necessarily Articles 120 and 121 of the First Schedule to the Limitation Act would also apply. The contention that only three sections of the Limitation Act

have been specially extended to proceedings under the Act by Section 42 thereof is of no consequence once it is held that Order 22 of the code is applicable to appeals under the Act. Section 38 (1) of the act in our view clearly extends the procedure applicable to appeals under the Code to appeals under the Act. The extension of the procedure available under the Code to appeals under the Act attracts the entire procedure of the Code relevant for the purpose of disposing of an appeal under the Act. There is no scope to reckon an exception unless the statute indicated any. We are, therefore, not inclined to accept the submission advanced before us by Mr. Sen that the principles of abatement and delay were not applicable to the case in question and the Appellate Judge as also the High Court had gone wrong in applying the provision of the code and the Limitation Act of deal with application for substitution.

9. The appeal fails and is dismissed without any direction for costs.

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