

Harjeet Singh

Vs

Raj Kishore and Others

Civil Appeal No. 1722 of 1984

(D. A. Desai, Ranganath Misra JJ)

15.03.1984

ORDER

1. Special leave granted.

2. When the Second Appeal No. 1433171 preferred by the present appellant was pending before the High Court of Allahabad, it appears that respondent 3 died on July 6, 1976. An application for substitution was made on October 18, 1976. This is undoubtedly after ninety days from the date of death but before the expiry of sixty days within which an application to set aside abatement has to be moved. We have seen the application made by the appellant requesting the Court to condone the delay and grant substitution. This application was rejected by the order dated September 19, 1979. Surprisingly, the present appellant should have challenged that order. It however appears that he waited till the matter was formally on board. The High Court on July 2, 1980 disposed of the appeal by observing that the appeal the order dated July 2, 1980 but not the order dated September 19, 1979.

3. This is, of course technically improper. But when we are looking at the matter under Article 136 of the Constitution, these minor technicalities of procedural part should not come in our way from doing substantial justice. Therefore, at the oral request of the learned counsel, we treat this appeal as also against the order rejecting the application for substitution.

4. Having examined both the orders, we are satisfied that the High Court was in error in refusing substitution. There was delay of a few days and there was satisfactory explanation for the delay in seeking substitution. In the facts and circumstances of this case we, therefore, set aside the order dated September 19, 1976 and grant substitution. Once substitution is granted, the second order dated July 2, 1980 cannot survive and the appeal would not abate. Therefore the second order dated July 2, 1980 has to be set aside by us which hereby do.

5. Accordingly, this appeal succeeds and is allowed and the matter is remitted to the High Court with a direction that the Second Appeal No. 1433 of 1971 preferred by the present appellant shall be heard on merits. The appellant shall pay however the cost to the respondents which is quantified at Rs. 1000.

6. During the pendency of the special leave petition before this Court respondent 2 died on March 8, 1983. CMP for substitution is moved within time. CMP granted. Cause title may be amended before remitting the matter to the High Court.

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