

Mahant Niranjan Dass

Vs

Shiromani Gurudwara Prabandhak Committee, Amritsar,

Civil Appeal No. 2230 of 1978

(N. M. Kasliwal, K. Ramaswamy JJ)

31.07.1991

JUDGMENT

1. In this case the sole appellant died on 21st March, 1988. An application for bringing the legal representative on record was filed by Sri Gur Preet Dass Chela of the appellant on 24-1-1991. This application has been contested on behalf of the respondent on the ground that there is no satisfactory explanation regarding the delay in filing this application. It has been submitted that Gur Preet Dass himself had filed a suit in the Court of Sub-Judge Amloh on 29-8-1990 and in that plaint in para 15, Gur Preet had admitted that a case was pending between the Gurdwara Prabandhak Committee, Amritsar and Niranjan Dass, and the Supreme Court was pleased to stay dispossession of Niranjan Dass. Photostat copy of the order of the Supreme Court was also attached with the plaint and thus it is clear beyond doubt that the applicant Gur Preet Dass had the knowledge of the present appeal at least on the date of plaint that is 29-8-90. The application for substitution has been filed on 24-1-91 which is admittedly beyond the period of 90 days.

2. Learned counsel for the applicant brought to our notice and placed reliance on a decision of the Punjab and Haryana High Court in Smt. Har Devi v. Joginder Singh, reported in 1988 Civil Court cases 517 (P & H) and contended that the limitation in this case should be considered as three years as provided under Art. 137 of the Limitation Act, 1963.

3. We see no force in the above contention of the learned counsel for the applicant. Art.120 of the Limitation Act, 1963 clearly provides a period of 90 days for having the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent to be made a party. In our view the language of Art. 120 is clear and according to this the application in the present case ought to have been filed within 90 days of the death of sole appellant Niranjan Dass. The Punjab High Court in the above referred case took a wrong view that the provision of Art.120 is inapplicable and that the period of limitation would be three years and not 90 days. In the case before us Mahant Niranjan Dass was the sole appellant and he had died on 21-3-88 and the applicant claiming himself to be a Chela of Mahant Niranjan Dass ought to have filed the application for bringing him on record within 90 days of the death of the appellant-Niranjan Dass. Even if for arguments sake the period is calculated from the date of knowledge of the applicant with regard to the present appeal pending in the Supreme Court, that date comes to 29-8-90 the date of the plaint filed by Gur Preet Dass. The application filed on 24-1-1991 is even beyond 90 days of the date of knowledge of the present litigation. The case of the applicant that he came to know about this appeal only in January, 1991 when he received a letter from the Advocate on record addressed to Mahant Niranjan Dass, is totally false. Learned counsel for the applicant was thus unable to satisfy the delay in filing the application beyond 90 days.

4. In the result we dismiss the application filed by Gur Preet Dass for bringing him on record as legal representative of Mahant Niranjana Dass and for being substituted as an appellant. The application for setting aside the abatement and condoning the delay are also dismissed. As a result of the dismissal of these applications, this appeal also stands dismissed as having abated. There will be no order as to costs.

Appeal dismissed.

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