

# RAJASTHAN HIGH COURT

East India Hotels Ltd.

Vs.

Mahendra Kumari

S.B.C.C.O. No.4 of 2008

(Jitendra Ray Goyal, J.)

08.05.2008

## ORDER

**Jitendra Ray Goyal, J.**

1. Cross-objection under Order 41, Rule 22 of the Civil Procedure Code (in short the 'Code') has been filed by Shri Jitendra Singh, legal representative of deceased plaintiff-respondent No. 1 Smt. Mahendra Kumari, in first appeal filed by the appellant-defendant No. 2 the East India Hotels Ltd. against the judgment and decree dated 30-11-2005 passed by Additional District Judge (Fast Track) No. 4, *Jaipur City, Jaipur* in Civil Suit No. 243/ 2003 (Old No. 43/1986) whereby the suit of partition, cancellation of sale deed and permanent injunction was partly decreed but the trial Court dismissed the plaintiff's suit in so far as she claimed preferential right under Section 22 of the Hindu Succession Act, 1955. This part of the decree was assailed by the plaintiff-respondent No. 1 by way of filing this cross-objection. An application under Order 41, Rule 22 of the Code read with Section 5 of the Limitation Act was also filed for condonation of delay and extension of time to file the cross-objection.

2. Heard learned counsel for the parties on the application for condonation of delay and extension of time for filing the cross-objection.

3. Learned counsel appearing for the respondent-objector submitted that according to the provisions contained in sub-rule (1) of Rule 22 of Order 41 of the Code the period of limitation for filing the cross-objection starts from the date of service of the notice on the respondent or his pleader of the day fixed for hearing of the appeal and in the instant case no notice under Order 41, Rule 14 of the Code was ever served upon the respondent-objector, rather the case was never fixed for hearing of the appeal and that stage would come after preparation of the paper book, therefore, in the instant case

period of limitation for filing the cross-objection under Order 41, Rule 22 of the Code did not start to run, hence the cross-examination was filed well within the period of limitation. Reliance was placed on the judgment delivered in the case of *Union of India v. Jhuttar Singh, reported<sup>1</sup> in* wherein though notice of filing of the appeal was served on the respondent but no notice of the day of hearing of the appeal was served on him, therefore it was held that notice was not in compliance with the provisions of Order 41, Rule 22 of the Code. Reliance was also placed on the judgment delivered in the case of *Union of India v. Shibu Ram Mittal, reported<sup>2</sup> in* wherein it was held that notice informing a farzi date is not a notice of fixing the date of hearing of the appeal, therefore, the cross-objection filed by the respondent held to be well within limitation. Reliance was also placed on the judgment delivered in the case of *Rashida Begum v. Union of India, reported in<sup>3</sup>* wherein notice containing only the date of hearing of stay application was not considered to have confirmed specific requirement of law contained in Order 41, Rule 14 of the Code and therefore it does not offer starting point of limitation for filing cross-objection.

4. It was then submitted that apart from the provisions under Order 41, Rule 22 of the Code, the Appellate Court could exercise the power under Rule 33 of Order 41 of the Code even if the appeal is only against a part of the decree of the lower Court. The Appellate Court could exercise the power in favor of all or any of the respondents, although such respondent may not have filed any appeal or objection, therefore, in view of aforesaid provision the respondent-objector has a right to address to the Court in regard to that part of the decree or on a particular issue which was decided against him. Reliance was placed on the judgment delivered in the case of *Mahant Dhangir v. Madan Mohan, reported in<sup>4</sup>*

5. Learned counsel appearing for the appellant, in counter, submitted that cross-objection is hopelessly time-barred which was filed with the delay of 507 days from the period of limitation and this inordinate delay has not at all been explained by the objector. It was then submitted that in the instant case objector-respondent put in appearance through his counsel as a caveat or and in his presence and participation appeal was admitted on 28-3-2006, therefore since he was present through his counsel at the stage of admission and thereafter also remained present in the subsequent proceedings, no formal notice after admission fixing the date of hearing of the appeal was required to be served but notice after admission was ordered to be served upon respondent No. 2 under Rule 14 of Order 41 of the Code as he was not present at that stage, therefore, period of limitation prescribed under Order 41, Rule 22 of the Code

started running from 28-3-2006 for filing the cross-objection as against objector-respondent. Reliance was placed on the judgment delivered by the learned single Bench of this Court in *Ram Saran Sharma v. Smt. Kamla Acharya, reported in* <sup>5</sup>

6. I have considered the rival submissions of the parties.

7. Before coming to the main issue of limitation, it would be appropriate to have a glance over the proceedings in the appeal.

8. In the instant case, the appeal was filed by the appellant-defendant. The East India Hotels Ltd., on 9-3-2006 which was listed on 22-3-2006 for admission. On that day objector-respondent appeared through his counsel and 28-3-2006 was fixed for admission of the appeal. On that day this Court admitted the appeal in the presence of counsel for the respondent-objector and notice was issued to remaining respondent No. 2 Ranjeet Singh and both the parties were directed to maintain status quo and thereafter on filing the power (sic) on behalf of respondent No. 2 service was also completed upon him.

9. Now advertent to the main issue of limitation that as to what is the starting point of the limitation for filing the cross-objection in the instant case, it would be appropriate to have a look over the relevant provisions in regard to filing of the cross-objection under sub-rule (1) of Rule 22 of Order 41 of the Code which is reproduced here as under:-

"22. Upon hearing respondent may object to decree as if he had preferred separate appeal. - (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree (but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favor; and may also take any cross-objection) to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow."

10. From the above provisions, it is manifestly clear that the cross-objection has to be filed in the Appellate Court within a period of one month from the date of service on him or his pleader of the notice of the day fixed for hearing of the appeal or even within such further time as the Appellate Court may see fit to allow. A close scrutiny of the procedure of filing of appeal and thereafter proceedings provided under Order 41, Rule 9 of the Code reveals that after proper presentation of the appeal the same is

to be posted for admission which may be dismissed at the admission stage and if the same is not dismissed at the stage of admission under Order 41, Rule 11 of the Code then the Appellate Court shall fix the day for hearing of such appeal as provided under Rule 12 of Order 41 of the Code and notice shall be served on the respondent or his pleader to appear and answer. As has been pointed out earlier, the objector-respondent already put his appearance before this Court even before admission of the appeal as a caveat or and his counsel was present and participated in proceedings at the admission stage and in his presence the appeal was admitted, therefore, in my considered view formal notice in writing under the prescribed form under Order 41, Rule 14 of the Code was not essential to be served upon the objector-respondent who participated in the proceedings and was having full knowledge of the admission of the appeal. Similar view has been taken by this Court in Ram Saran Sharma's case (supra) wherein it was observed that when a caveat has already been entered into, service of notice of hearing of the appeal, on the respondent, cannot be taken to be necessary, and the limitation of one month, for filing cross-objection, at the most can be computed from the date of admission of the appeal and not prior to that. In the case of *Mutyam Agaiah v. Special Deputy Collector, (NTPC) LA Unit, reported* <sup>6</sup> in while taking the similar view it was held as under :-

"We have to understand the issue of notices in the proper perspective. The notices are meant for giving knowledge to the other side regarding the judicial proceedings filed by the appellant. It is not every time necessary that the notices should be in writing in the prescribed form. If the knowledge of filing of the appeals can be proved then it is sufficient notice in law. The respondent-cross-objector engaged an Advocate, who filed Vakalatnama and he defended the cause of the claimant in the Original Petition. It means that the cross-objector had sufficient knowledge regarding the appeals. Nothing prevented for the respondent-cross-objector for filing the objections."

11. So far ratio decided in the cases of *Union of India v. Jhutter Singh*; *Union of India v. Shibu Ram Mittal* and *Rashida Begum v. Union of India* (all supra) is concerned, the facts of these three cases are distinguishable from the present case since in all these three cited cases there was no point in issue that at the time of admission of the appeal the objector-respondent was present and participated in the proceedings.

12. In view of above discussion, I am of the firm view that in the instant case the period of limitation for filing the cross-objection by the objector-respondent starts running from 28-3-2006 when in the presence and active participation by the counsel

for the objector-respondent in the proceedings, the appeal was admitted and the notice after admission was ordered to be served upon remaining respondent No. 2 Ranjeet Singh who was not present before the Court.

13. It is not disputed that thirty days period is prescribed for filing the cross-objection under Rule 22 of Order 41 of the Code, though discretion has been left with the Court to extend the period of limitation under the said provision. In the present case cross-objection was filed with the delay of 507 days and in the application seeking condonation of delay and extension of time in filing the cross-objection, it was averred that the objector was under the mistaken belief that in the appeal entire judgment and decree is vulnerable and open to argument including the grievance of the objector-respondent on the point of dismissal of his claim for right to pre-emption and after the advise he realized the necessity of filing the cross-objection. In my view, subsequent advise of the advocate for filing the cross-objection or some assumption in the mind of the objector does not offer good and sufficient reason for seeking condonation of inordinate delay of 507 days in filing the cross-objection. In the case of *Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai*, reported in (2004) 3 SCC 214 : (AIR 2004 Supreme Court 1815) the Hon'ble Apex Court did not find it sufficient ground for condonation of delay that cross-objection was filed with the advise and persuasion of the counsel.

14. In this view of the matter it can be safely held that in the present case sufficient reason for condonation of delay of 507 days and extension of period of limitation has not properly been explained.

15. Now the point remained to be answered is whether the objector-respondent can address on all the issues of controversy including the issue which was decided against him by virtue of the provisions under Rule 33 of Order 41 of the Code even he did not prefer any appeal and cross-objection was not admitted being time-barred?

16. In this regard, suffice is to say that the law is very much settled by the Hon'ble Apex Court and in the case of Mahant Dhangir case (supra) it was held as under :-

"the appellate Court could exercise the power under Rule 33 even if the appeal is only against a part of the decree of the lower Court. The appellate Court could exercise that power in favor of all or any of the respondents although such respondent may not have filed any appeal or objection. The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The

appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate Court could also pass such other decree or order as the case may require. The words "as the case may require" used in Rule 33 of Order 41 have been put in wide terms to enable the appellate Court to pass any order or decree to meet the ends of justice."

17. In the light of above authoritative pronouncement, it can be observed that objector-respondent can address on all the issues including the issues which were decided against him within the purview and scope of Rule 33 of Order 41 of the Code at the time of final arguments of appeal, though he has not filed any appeal and his cross-objection has not been admitted being time-barred.

18. In view of what has been discussed above, the application under Section 5 of the Limitation Act is rejected and consequent thereof the cross-objection is declined to be admitted as being time-barred.

Petition dismissed.

Cases Referred.

1. 46 (1992) DLT 364 (DB)
2. 76 (1998) DLT 577
3. 91 (2001) DLT 664: (AIR 2001 (NOC) 81 (Del))
4. 1987 (Supp) SCC 528: (AIR 1988 SC 54)
5. RLR 2000 (3) page 77: (2000 AIHC 4588)
6. 2002 (2) ALT 715