

RAJASTHAN HIGH COURT

Mahendra

Vs.

Rawata Ram

S.B.C.W.P. No. 12 of 2009

(Prakash Tatia, J.)

06.02.2009

ORDER

Prakash Tatia, J.

1. Heard learned counsel for the petitioners.
2. The plaintiffs legal representatives/applicants submitted an application under Order 22, Rule 3, Civil Procedure Code on account of death of sole plaintiff which occurred on 10-12-2004 but the application was submitted after more than 2= years on 29-3-2007. Said application was allowed by the trial Court by treating that application under Order 22, Rule 9, Civil Procedure Code which is apparent from the first paragraph of the impugned order dated 12-9-2008 and thereafter, the above legal representatives were taken on record.
3. Learned counsel for the petitioners/defendants submitted that the plaintiffs legal representative had knowledge of the suit and they did not move any application under Order 22, Rule 9, Civil Procedure Code as well as the application under Section 5 of the Limitation Act and, therefore, the trial Court's order dated 12-9-2008 is illegal and deserves to be set aside.
4. I considered the submissions of learned counsel for the petitioners and perused the application Annex.3 and also perused the reasons given in the impugned order.
5. It appears that in the application, the applicants very specifically and in detail stated the reasons for not taking steps in time after the death of sole plaintiff and they also pleaded that the plaintiff himself was old person and his legal representatives are illiterate persons and are engaged in agriculture operations. Not only this, in the Court, there was no Presiding Officer for a long period and, therefore, they were not

supposed to attend the Court when the Presiding Officer was not in Court as well as when the case was fixed for service of the defendants/petitioners only.

6. Those reasons given by the applicants appear to have been taken to be the reasons which could have been taken in application filed under Order 22, Rule 9, Civil Procedure Code. Therefore, the trial Court considered the said application under Order 22, Rule 9, Civil Procedure Code by mentioning in the order itself and in my opinion, it was the right approach of the trial Court.

7. At this juncture, it will be worthwhile to mention here that in the application under Order 22, Rule 3 or under Order 22, Rule 4, Civil Procedure Code, one is required to make prayer only for impleading the legal representative of deceased plaintiff/defendant and in application under Order 22, Rule 9, Civil Procedure Code as well as Section 5 of the Limitation Act, one is required to plead reasons for not moving the said application in time. Substantially Order 22, Rule 9, Civil Procedure Code and Section 5 of the Limitation Act are of identical nature with the prayer for condonation of delay in taking action by the applicants. All these applications can be merged in one application when the application is not in time for taking on record the legal representatives of any of the parties to the suit. By narrating the facts in 3 different applications with respect to cause of delay to avoid complications of objections that the plea which has been taken in the application under Order 22, Rule 9, Civil Procedure Code has not been pleaded in the application under Order 22, Rule 3 or 4, Civil Procedure Code, if all the facts are pleaded in one application that will advance cause of justice only and will avoid unnecessary filing of applications.

8. It is settled law that mere title is not decisive for deciding the nature of the application. There appears to be no bar as such for filing consolidated application for the relief one under Order 22, Rule 3 or 4, Civil Procedure Code and another under Order 22, Rule 9, Civil Procedure Code and for condonation of delay under Section 5 of the Limitation Act. Even if Rules of procedure require for filing separate application for separate reliefs, even then, there can be no justification for filing 3 separate applications when the reliefs sought in three applications are connected or when reliefs sought are dependent upon reliefs required to be obtained for getting complete relief. By praying for condonation of delay and on condonation of delay by the Order of the Court, the relief in application under Order 22, Rule 9, Civil Procedure Code can be granted and when above two reliefs are granted, then only relief under Order 22, Rule 3 or Rule 4, Civil Procedure Code can be granted. These three applications - one for condonation of delay, another for setting aside of

abatement and third for taking on record the legal representatives are required to be filed together obviously on the same day, then there is no reason to ask for three separate applications and three separate notices to other party or such interconnected matters.

9. At this juncture, it will be worthwhile to mention here that suit for various reliefs can be filed by paying consolidated Court fees, then why application cannot be filed for multifarious reliefs.

10. In view of the above reasons, the approach of the trial Court was fully justified and the trial Court rightly did not demand different applications for virtually the same relief. Even in a case where the relief of setting aside of abatement has not been specifically claimed, the Court may consider the complete application to find out what is the prayer and if case is made out for condonation of delay and for setting aside of abatement of proceedings, the Court may condone the delay, may set aside abatement of the suit/appeal even without specific prayer. Relief of impleading of legal representatives of one of the party may be if case is made out on the basis of the facts pleaded in the application, can be considered as an application for setting aside of abatement, which is a prayer inherently within the prayer for seeking relief of taking on record the legal representatives of the deceased in the suit or appeal.

11. In view of the above reasons, there is no illegality in the impugned order passed by the trial Court. Consequently, this writ petition is hereby dismissed.

Petition dismissed.