

Mohan Lal v. Rameshwar Dass and others (G. C. Mital, J.)

With the greatest respect, therefore, it must be held that *Jullundur Central Co-operative Bank Ltd.'s case* (supra) was incorrectly decided and is hereby overruled.

15. The answer to the question posed at the outset is, therefore, rendered in the affirmative and it is held that the provisions of the Co-operative Societies Act, 1961, exclude the applicability of Section 33 of the Indian Arbitration Act to a statutory Award under Section 56 of the former Act.

16. Applying the above it is inevitable that the solitary contention pressed before us that the civil court had the jurisdiction to try the application under Section 33—has to be rejected. Affirming the trial court's finding on this point (the other issues were not challenged before us) we dismiss the present appeal. In view of some conflict of precedent within this Court, we leave the parties to bear their own costs.

Rajendra Nath Mittal, J.—I agree.

N. K. S.

Before G. C. Mital, J.

MOHAN LAL,—Appellant.

versus

RAMESHWAR DASS AND OTHERS,—Respondents.

Regular Second Appeal No. 1417 of 1981.

August 10, 1982.

Code of Civil Procedure (V of 1908)—Sections 141 and 153—Order 1 Rule 10 and Order 41 Rule 20(2)—Appeal filed in court against two respondents—One of the respondents dead before the filing of the appeal but after the judgment of the lower court—Such appeal—Whether could be said to be a nullity—Legal representatives of such a deceased—Whether could be brought on the record.

Held, that the death of one of the respondents after the decision of the Court below and before the filing of the appeal does not

render the appeal a nullity and the legal representatives of the deceased can be brought on record under section 153 of the Code of Civil Procedure, 1908. Section 153 of the Code would be applicable to appeals also in view of section 141, read with Order 1 Rule 10 and Order 41 Rule 20(2) of the Code.

(Para 2).

Regular Second Appeal from the Order of the Court of Shri R. D. Aneja, Additional District Judge, Ambala, dated 16th May, 1981 affirming that of the Order of the Court of Shri L. N. Mittal, HCS, Sub-Judge 1st Class, Jagadhri, dated 21st March, 1980 decreeing the suit of the plaintiffs' of the suit land and leaving the parties to bear their own costs.

M. S. Jain, Advocate, for the Appellant.

J. K. Sharma, Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

1. Gopi Ram and Rameshwar Dass filed a suit for possession of the land measuring 9 Kanals 8 Marlas, which was decreed by the trial Court on March 21, 1980. After obtaining the copies of the judgment and decree of the trial Court, the sole defendant filed first appeal before the District Judge, Ambala on April 22, 1980. After excluding the time spent in obtaining the copies, the last date for filing the appeal was May 5, 1980. Hence the appeal was filed well within time. Notice of the appeal was issued to the plaintiff-respondents for May 25, 1980. On May 25, 1980, it was reported that Gopi Ram plaintiff-respondent was dead. After making enquiries about the death of Gopi Ram, an application was filed on June 12, 1980, for bringing on record his legal representatives. Gopi Ram had died on April 4, 1980, i.e., before the filing of the appeal and after the decision of the trial Court. Later on an application for condonation of delay was also filed. The Additional District Judge, before whom the appeal and the application came up for hearing, by judgment and decree, dated May 16, 1981, held that the appeal against a dead person was a nullity and also observed that the appellant was guilty of not making full and true disclosure of facts, as he had not mentioned the date of death of Gopi Ram and, therefore, he was disentitled to any relief. Consequently the appeal was dismissed. This is second appeal by the defendant.

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(2) After hearing learned counsel for the parties I am of the view that this appeal deserves to succeed. The lower appellate Court relied on *Bai Pani Vankar vs. Madhabhai Galabhai Patel*, (1), in coming to the conclusion that appeal against a dead person is a nullity and the legal representative cannot be allowed to be substituted. Firstly that case is clearly distinguishable on facts. There the sole appellant was dead at the time of filing appeal and, therefore, the pleader who preferred the appeal could not be considered to have any authority to file the same, as the power of attorney in his favour lapsed by the death of the appellant. In the present case the appellant was alive and out of the two respondents only one had died. In this regard it has been ruled in *Mehar Singh versus Labh Singh* (2), *Joginder Singh and others versus Krishan Lal and others*, (3), *Chatur Prasad-Bara Bacha and others, versus Baijnath Prasad and another*, (4), *Doddamallappa Channabasappa Kari versus Gangappa Shiddappa Gulganji* (5), *Ramjeevan versus Chand Mohammad* (6), and *State of Himachal Pradesh, etc. v. Dhuru Ram*, etc. (7) that the death of one of the respondents after the decision of the Court below and before the filing of the appeal does not render the appeal a nullity and the legal representatives of the deceased respondent can be brought on record under Section 153 of the Code of Civil Procedure. Section 153 of the Civil Procedure Code would be applicable to appeals also in view of Section 141, read with Order 1 rule 10 and order 41, rule 20(2) of the Code. Therefore, I am of the view that the appeal filed was not a nullity and the lower appellate Court had the jurisdiction to bring on record the legal representatives of the respondent who had died before the filing of the appeal and after the decision of the lower Court.

(3) This brings me to the consideration of the point whether sufficient cause has been made out for bringing the legal representatives of Gopi Ram on record and for condonation of the delay. If Gopi Ram had died after the filing of the appeal, then the appellant

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- (1) A.I.R. 1953 Bombay 356.
 - (2) A.I.R. 1932 Lahore 305.
 - (3) A.I.R. 1977 Punjab and Haryana 180.
 - (4) A.I.R. 1930 Allahabad 131.
 - (5) A.I.R. 1962 Mysore 44.
 - (6) A.I.R. 1976 Rajasthan 65.
 - (7) A.I.R. 1981 Himachal Pradesh 34.

had limitation of 90 days for bringing his legal representatives on the record and a further period of 60 days for having the abatement set aside. In the Rules and Orders of this Court, a rule has been made that it is no longer the duty of the appellant to bring on record the legal representatives of a deceased respondent. The duty has been cast on the legal representatives to apply for bringing them on record. Therefore, in Punjab and Haryana, including the Union Territory of Chandigarh, if the legal representative of a deceased respondent are not brought on record, at the instance of appellant within a period of 150 days from the date of death, the appeal does not abate and the same can be heard in the absence of the legal representatives. Hence if the death had occurred after the filing of the appeal, the question of abatement would not have arisen. The facts of the present case are that application for bringing on record the legal representatives was filed two months and 8 days after the death of Gopi Ram respondent, which would have been well within time if the death had occurred after the filing of appeal and if High Court Rules and Orders had not absolved the appellant from filing such an application. Therefore, on these peculiar facts a liberal view of the matter will have to be taken instead of non-suiting the appellant on a technical ground. Accordingly I find it to be a fit case for condoning the delay in bringing on record the legal representatives of Gopi Ram deceased respondent.

(4) It is true that in the application for bringing on record the legal representatives of Gopi Ram, the appellant did not mention the date of death, but that omission by itself did not justify the dismissal of application for condonation of delay outright. The Court below relied on decisions in writ jurisdiction, which is an extraordinary jurisdiction and where it is expected from every litigant to place all facts before the Court and there also if material facts are with-held, which if had been disclosed, either *rule nisi* had not been issued or *ex-parte* stay would not have been granted. Only in those cases the Court refuses to exercise the writ jurisdiction. By omission to mention the date of death, the appellant did not gain in getting the *rule nisi* issued or in obtaining interim order, hence this point cannot stand in the way of the appellant.

(5) For the reasons recorded above, this appeal is allowed, judgment and decree of the lower appellate, dated May 5, 1981 are

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hereby set aside and the matter is remitted to that Court to restore the appeal to its original number and to decide the same on merits in accordance with law. The parties through their counsel are directed to appear before the Additional District Judge, Ambala on September 14, 1982. There will be no order as to costs.

N. K. S.

Before S. S. Sodhi, J.

RATTAN KAUR AND ANOTHER,—Appellants.

versus

RANJIT SINGH ALIAS BALJIT SINGH AND OTHERS,—
Respondents.

First Appeal from order No. 286 of 1975.

August 11, 1982.

Motor Vehicles Act (IV of 1939)—Section 110-A—Indian Penal Code (XLV of 1860)—Section 304-A—Motor vehicle involved in an accident—Fine imposed by a criminal Court as sentence upon the driver of the vehicle for rash and negligent driving—Fine directed to be paid to the heirs of the deceased—Claim for compensation by the heirs under section 110-A—Fine already received by the heirs—Whether could be set off against the compensation awarded by the Tribunal.

Held, that when a criminal Court orders that out of fine recovered, a sum be paid to the injured or to the heirs of the deceased as the case may be, the amount is ordered to be paid as compensation which is, indeed, the only rationale for such payment. It is, thus, a payment which is made directly and as a consequence of the injuries suffered by the injured or the loss suffered by the heirs of the deceased arising from the death of the deceased. The principle upon which the amount received by the claimants on account of insurance moneys which become payable to them on the death of the deceased rests upon premises wholly inapplicable to the payment of a sum of money as compensation out of the fine imposed as sentence upon conviction by the criminal court. These two payments, thus, bear no kinship or resemblance to each other and cannot, therefore, be equated. The sums which are ordered by the criminal court to be paid to the injured or to the heirs of the deceased out of the amount recovered from the accused as fine are, thus received by them as compensation for such injury or death and have accordingly to be set off against any compensation that the claimants may be held entitled to.

(Paras 7 and 8).