

BALRAM & OTHERS

v.

THE THIRD ADDITIONAL DISTRICT JUDGE & ANR.

April 12, 1983

[R.S. PATHAK AND RANGANATH MISRA, JJ].

U.P. Imposition of Ceiling on Land Holdings Act, 1960—Section 38(1)—Scope of—Section extends procedure applicable to appeals under CPC to appeals under the Act—Whether attracts entire procedure of the Code.

During the pendency of the ceiling appeal under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, the sole appellant died on January 9, 1980. On October 25, 1980, his three sons applied for setting aside of abatement and condonation of delay and for substitution of their names as legal representatives of their deceased father. The Additional District Judge dismissed the appeal on the view that there was no sufficient cause for condonation of delay and for vacating the abatement.

The High Court dismissed the appellants' Writ Petition holding that Article 120 of the First Schedule of the Limitation Act, 1963 was applicable and that therefore the petition for substitution should have been filed within 90 days from the date of death.

In appeal to this Court, it was contended that in view of the provisions of sections 38 and 42 of Act, the Code of Civil Procedure 1908 applied only for the disposal of appeals and the provisions of the Limitation Act, 1963, excepting sections 4, 5 and 12, were not applicable to proceedings under the Act. Dismissing the appeal.

HELD : Section 38(1) of the Act clearly extends the procedure applicable to appeals under the Code to appeals under the Act. The extension of the procedure available under the Code to appeals under the Act attracts the entire procedure of the Code relevant for the purpose of disposing of an appeal under the Act. There is no substance in the contention that the principles of abatement and delay were not applicable to the instant case. [738 C-D]

Under the Code, when death occurs at an appellate stage, substitution is effected in accordance with the procedure laid down in Order XXII. In terms of section 34(1) of the Act, if death occurred of one of the parties at the appellate stage of a ceiling appeal, substitution had also to be made according to the procedure laid down in O. XXII of the Code. Rule 11 of Order XXII indicates that the provisions of the Code do apply to appeals. [737 B]

Again under Rule 3(2) of Order XXII if no application is made under sub-rule (1) within the time limited by law the suit shall abate. Time has been limited by law in Article 120 of the First Schedule of the Limitation Act which provides that an application under the Code to have the legal representatives of the deceased appellant made a party has to be within 90 days from the date of death of the appellant and Article 121 provides 60 days period for the application for an order to set aside abatement from the date of abatement.. [737 E-G]

If the Code and the Limitation Act applied at the time when the application for substitution was made, the legal reprercentatives had to ask for substitution, setting aside of abatement and condonation of delay in term of rule 9(3) of Order XXII of the Code. There is little room to dispute that if Order XXII of the Code applies necessarily Articles 120 and 121 of the First Schedule of the Limitation Act would also apply. [737 A]

In the instant case the application for substitution of the legal representatives of the deceased appellant when made, was beyond 150 days from the date of his death and the High Court had rightly rejected the appellants' application.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3952 of 1983

Appeal by Special leave from the Judgment and Order dated the 6th October, 1982 of the Allahabad High Court in Civil Misc. Writ Petition No. 7029 of 1981.

A.K. Sen and *Pramod Swarup* for the Appellants.

O.P. Malhotra and *Mrs. S.Dikshit* for Respondent No. 2.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. This appeal by special leave seeks to assail the decision of the Allahabad High Court in a proceeding under Article 226 of the Constitution refusing to quash an order of the IIIrd Additional District Judge, Kanpur, holding that Ceiling Appeal No. 189 of 1976 under the U.P. Imposition of Ceiling on Land Holdings Act, 1960, had abated for non-substitution of the sole appellant's legal representatives.

The ceiling appeal in question had been carried by one Rameshwar and during its pendency the sole appellant died on January 9, 1980. Balram, Ram Bahadur and Jugal Kishore who are the three sons of Rameshwar moved the appellate Court for substitution of their names as legal representatives in place of Rameshwar

- A** on October 25, 1980. They applied for setting aside of abatement and condonation of delay. The Additional Distt. Judge took the view that there was no sufficient cause for condonation of delay and good reasons had not been shown for vacating abatement. Accordingly the appeal was dismissed. An application under Art. 226 was made before the Allahabad High Court for quashing of the appellate order.
- B** It was contended that there was no period of limitation prescribed in respect of proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 ('Act' for short) for applying for substitution, nor was there any period prescribed in Rule 3 of Order XXII of the Code of Civil Procedure ('Code' for short) which became applicable in view of s. 38 of the Act. Therefore, on the expiry of
- C** 90 days from the date of death of Rameshwar no abatement set in and the application for substitution made on October 25, 1980 could not have been rejected as being barred by limitation. The High Court referred to s. 38 (1) of the Act and to Rules 3, 9 and 11 of Order XXII of the Code and held that Article 120 of the First Schedule of
- D** the Limitation Act, 1963, was applicable and the petition for substitution should have been filed within 90 days from the date of death. The writ application was, therefore, dismissed.

- The decision of the Allahabad High Court is assailed before this Court. When on the special leave petition notice was given it was
- E** indicated that the case would be disposed of on merits. The respondents have, however, not appeared to contest.

- Mr. Sen appearing in support of the appeal says that s. 38 (1) of the Act makes it clear that the procedure in the Code has been made applicable for hearing and disposal of appeals. Under s. 42 of
- F** the Act, sections 4, 5 and 12 of the Limitation Act, 1963, have been made applicable to proceedings including appeals under the Act. According to Mr. Sen, in view of the provisions in ss. 38 and 42 of the Act the appellate authority and the High Court should have accepted the contention of the appellants that the Code was applied
- G** only for the disposal of appeals and the provisions of the Limitation Act excepting ss. 4, 5 and 12 were not applicable to proceedings under the Act.

Section 38 (1) of the Act provides :

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"In hearing and deciding an appeal under this Act, the appellate court shall have all the powers and the privileges of a civil court and follow the procedure for the

hearing and disposal of appeals laid down in the Code of Civil Procedure, 1908".

Under the Code when death occurs at an appellate stage, substitution is effected in accordance with the procedure laid down in Order XXII. In terms of sub-s. (1) of s. 38 of the Act, if death occurred of one of the parties at the appellate stage of a Ceiling Appeal, substitution had also to be made according to the procedure laid down in Order XXII of the Code. Rule 3 of Order XXII of the Code provides : "(1) where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representatives of the deceased plaintiff to be made a party and shall proceed with the suit". Rule 11 of Order XXII of the Code indicates that the provisions of that Order do apply to appeals.

There is another aspect which militates against Mr. Sen's argument. Sub-rule (2) of rule 3 of that Order provides : "where *within the time limited by law* no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff". (Emphasis is added by us by underlining the words in the provision). Obviously, time has been limited by law in Article 120 of the First Schedule of the Limitation Act to which we shall presently refer.

Article 120 of First Schedule of the Limitation Act provides that an application under the Code to have the legal representatives of the deceased appellant made a party has to be made within 90 days from the date of death of the appellant and Article 121 provides 60 days' period for the application for an order to set aside abatement from the date of abatement. It is not disputed that the application for substitution of the legal representatives of Rameshwar when made was beyond 150 days from the date of his death. If the Code and the Limitation Act applied at the time when the application for substitution was made, the legal representatives had to ask for substitution, setting aside of abatement and condonation of delay in terms of rule 9 (3) of Order XXII of the Code. Whether there was sufficient cause for the delay to be condoned and for abatement

- A** to be vacated were matters for the appellate court and Mr. Sen has rightly not canvassed before us that discretion which vested in the appellate court had not been properly exercised. The sole ground pressed before us, as we have already stated, is as to whether to an appeal under the Act the provisions of the Code and the Limitation Act referred to above would apply. There is little room to dispute that if Order XXII of the Code applies necessarily Articles 120 and 121 of the First Schedule of the Limitation Act would also apply. The contention that only three sections of the Limitation Act have been specially extended to proceedings under the Act by s. 42 thereof is of no consequence once it is held that Order XXII of the Code is applicable to appeals under the Act. Section 38 (1) of the Act in our view clearly extends the procedure applicable to appeals under the Code to appeals under the Act. The extension of the procedure available under the Code to appeals under the Act attracts the entire procedure of the Code relevant for the purpose of disposing of an appeal under the Act. There is no scope to reckon an exception unless the statute indicates any. We are, therefore, not inclined to accept the submission advanced before us by Mr. Sen that the principles of abatement and delay were not applicable to the case in question and the appellate judge as also the High Court had gone wrong in applying the provisions of the Code and the Limitation Act to deal with the application for substitution.
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The appeal fails and is dismissed without any direction for costs.

P.B.R.

Appeal dismissed.