

A

MANI RAM AND ANR.

v.

HARI SINGH AND ORS.

JULY 21, 1992

B

[DR. T.K. THOMMEN AND S.P. BHARUCHA, JJ.]

Code of Civil Procedure, 1908:

C

Order 22 Rules 3 and 9—Application for bringing on record legal representatives—Delay—Condonation of.

Applications for bringing on record the legal representatives of one of the appellants in a Regular Second Appeal, were dismissed by the High Court. However, the High Court partly allowed the Regular Second Appeal.

D

The present appeals have been filed against the High Court's orders. It was contended on behalf of the appellants that since the decree made was in favour of a dead man also, the decree should be set aside.

Dismissing the appeals, this Court,

E

HELD: 1. Applications under Order 22 Rules 3 and 9 read with section 151 CPC were made to bring the heirs of the deceased on record as appellants in the main appeal and, since the appeal was allowed in part, the High Court ought to have considered the applications on merits. However, this is not a good ground for setting aside the decree. At the most, there would be a case for remand; but even that is not necessary for the applications are clearly allowable. There was a delay of 15 days in the application to bring the heirs on record and it was explained, supported by a medical certificate, that the third appellant, who was looking after the appeals before the High Court, has suffered from typhoid during the relevant period. [593-H; 594-A]

F

G

Harjeet Singh v. Raj Kishore & Ors., [1984] 3 SCC 573, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1267 and 1268 of 1978.

H

From the Judgment and Order dated 3.4.78 of the Punjab & 592

Haryana High Court in Regular Second Appeal Nos. 105 and 601 of 1971. A

D.V. Sehgal, S.K. Bagga, Ms. Shurestha Bagga, Ved Prakash Jyani and Seeraj Bagga for the Appellants.

Anil Kumar Gupta for the Respondent.

The Judgment of the Court was delivered by B

BHARUCHA, J. The learned Single Judge of the High Court of Punjab & Haryana found no merit in Regular Second Appeal No.601 of 1971 and dismissed the same with costs. He allowed, to the extent indicated in the judgment and order under appeal, Regular Second Appeal No. 105 of 1971 with no order as to costs. C

Learned counsel for the appellants fairly stated that, in view of the judgment of this Court in *Atam Prakash v. State of Haryana & Ors.*, [1986] 2 S.C.C. 249, there was no merit in the appeal against the order on Regular Second Appeal No. 601 of 1971. D

Learned Counsel for the appellants, however, contended that the decree made in Regular Second Appeal No.105 of 1971 was in favour, inter alia, of dead man, namely, the second appellant Rup Ram and that, therefore, the decree should be set aside. E

We find that after Rup Ram died an application (Civil Miscellaneous No.1122/C of 1975) under Order 22 Rule 9 read with Section 151 of the Code of Civil Procedure was made praying that delay be condoned, the legal representatives of the deceased appellant Rup Ram be allowed to be brought on record and the abatement, if any, be set aside. Simultaneously, F a second application (Civil Miscellaneous No.1123/C of 1975) was filed under Order 22 Rule 3 read with Section 151 of the Code of Civil Procedure praying that the three sons of Rup Ram be brought on record as appellants in his place. In the order under appeal, the learned Single Judge, stated, "Since R.S.A No.601 of 1971 has been dismissed, Civil Miscellaneous Application Nos.1122-C and 1123-C of 1975 have become G infructuous and the same are also dismissed".

Clearly, there was a misapprehension in the mind of the learned Single Judge. The aforesaid applications were made to bring the heirs of Rup Ram on record as appellants in Appeal No.105 of 1971 and, since H

A the learned Single Judge was allowing that appeal in part, he ought to have considered the two applications on merits. However, this is not a good ground for setting aside the decree. At the most, there would be a case for remand; but even that, we think, is not necessary for the applications are clearly allowable. There was a delay of 15 days in the application to bring the heirs on record and it was explained, supported by a medical certificate, that the third appellant, who was looking after the appeals before the High Court, had suffered from typhoid during the relevant period. We are supported in the view that we take by the judgement of this Court in *Harjeet Singh v. Raj Kishore & Ors.*, [1984] 3 S.C.C. 573.

In the result, the appeals are dismissed. There shall be no order as to costs.

G.N.

Appeals dismissed.