

STATE OF MADHYA PRADESH

v.

S.S. AKOLKAR

JANUARY 25, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Code of Civil Procedure, 1908 :*

*Order 22 Rules 4, 10A—Death of party—Bringing the legal representatives—Setting aside of abatement order—Delay in filing application—Condonation—Refusal of High Court—Held : Delay in official business requires its broach and approach from public justice perspective—High Court not right in its refusal and so its order set aside—Delay condoned—Abatement set aside—Legal Representatives brought on record—High Court to dispose of the appeal within two months since it is an old appeal Limitation Act—S.5.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3182 of 1996.

From the Judgment and Order dated 24.11.84 of the Madhya Pradesh High Court in C.F.A. No. 57 of 1976.

U.N. Bhachawat, S.K. Agnihotri and P. Kumar for the Appellant.

S.K. Gambhir for the Respondent.

The following Order of the Court was delivered :

Delay condoned.

Leave granted.

Heard learned counsel for both sides.

The respondent's Civil Suit No. 2-B of 1970 to recover Rs. 20,644 with proportionate costs was decreed by the District Court, Mandasaur. First Appeal No. 57/76 filed by the appellant was pending in the High Court. When the matter had come up on March 16, 1983 for hearing, the counsel for the respondent had informed that the respondent had died on December 31, 1980 and he gave the names of his legal representatives. The

A application for substitution of the legal representatives under Order 22, Rule 4 of the CPC was filed on April 8, 1983, with a delay of 15 days. The applications for setting aside abatement and delay were dismissed by the High Court; consequently it dismissed the appeal. Hence, this appeal by special leave.

B It is contended by Shri Bachawat, learned senior counsel appearing for the State, that the delay was properly explained. In the circumstances, the High Court was not justified in refusing to condone the delay on bringing the legal representatives on record and setting aside the abatement. Shri Gambhir, learned counsel for the respondent, contended that in spite of the respondent's counsel having informed the counsel for the State of the death and having given the names of the legal representatives, no steps were taken and no diligence was shown. The delay, therefore, was not properly explained. The High Court was right in refusing to condone the delay. The High Court proceeded on the premise that no explanation was given for not taking steps to bring legal representatives on record and even accepting that respondent had come to know about the death of the plaintiff on March 16, 1983, and though the application was signed on April 7, 1983, the application had come to be filed on April 8, 1983. This would show that there was no diligence on the part of the respondent and no proper explanation was given.

E We find that the approach of the High Court is wholly untenable and unsustainable. Under Order 22 Rule 10A, it is the duty of the counsel, on coming to know of the death of a party, to inform it to the Court and the Court shall give notice to the other party of the death. By necessary implication delay for substitution of legal representatives begins to run from the date of knowledge. It is notorious that in Government proceedings, no one takes personal responsibility and each would pass over the responsibility to the other officer. It is common knowledge that almost 50% of the cases filed in the Supreme Court are barred by limitation. Delay is equally usual in private cases. The Court examines each case on merits.

F The counsel for the respondent had informed the death of the principal respondent Akolkar on March 16, 1983. It would be obvious that counsel for the State has to intimate the concerned officer who in turn is required to have the details ascertained through his subordinates by deputing the concerned officer to ascertain the further details of the legal representatives and feed the officer with all factual details. In the process, delay

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would occur. Accordingly, the applications came to be prepared on April 7, 1983 and were filed next day. It would be obvious that they had acted with diligence in collecting the information and filing the petition. In the process, a short delay had occurred.

It is settled law that the consideration for condonation of delay under Section 5 of Limitation Act and setting aside of the abatement under Order 22 are entirely distinct and different. The Court always liberally considers the latter, though in some cases, the Court may refuse to condone the delay under Section 5 in filing the appeals. After the appeal has been filed and is pending, Government is not expected to keep watch whether the contesting respondent is alive or passed away. After the matter was brought to the notice of the counsel for the State, steps were taken even thereafter; after due verification belated application came to be filed. It is true that Section 5 of Limitation Act would be applicable and delay is required to be explained. The delay in official business requires its broach and approach from public justice perspective.

Under these circumstances, we are of the opinion that the High Court was not right in refusing to set aside the abatement and to condone the delay in filing of the petition to bring the legal representatives on record.

The delay is condoned. The abatement is set aside and the legal representatives are brought on record. The High Court is requested to dispose of the appeal as expeditiously as possible within two months from the date of the receipt of the order in this is very old appeal.

The appeal is allowed. No costs.

G.N.

Appeal allowed.