

PETITIONER:
MANI RAM AND ANR.

Vs.

RESPONDENT:
HARI SINGH AND ORS.

DATE OF JUDGMENT 21/07/1992

BENCH:
BHARUCHA S.P. (J)
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BHARUCHA S.P. (J)
THOMMEN, T.K. (J)

CITATION:
1992 AIR 1851 1992 SCR (3) 592
1992 SCC (3) 501 JT 1992 (4) 177
1992 SCALE (2) 44

ACT:
Code of Civil Procedure, 1908:
Order 22 Rules 3 and 9-Application for bringing on
record legal representatives-Delay-Condonation of.

HEADNOTE:
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.

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,

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]

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

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

From the Judgment and Order dated 3.4.78 of the
Punjab &

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Haryana High Court in Regular Second Appeal Nos. 105 and

601 of 1971.

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

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.

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.

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.

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, 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 infructuous and the same are also dismissed".

Clearly, there 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

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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 judgment of this Court in *Harjeet Singh v. Raj Kishor & 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.

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