

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 432 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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JAYANTILAL DEVJIBHAI DHIMAR

Versus

NAZMUDDIN ISMAIL KAGAZWALA

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Appearance:

MR RR MARSHALL for Petitioner

MR AJ PATEL for Respondents.

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 29/03/96

ORAL JUDGEMENT

The Revision Application is directed against the order dated 18.3.1994 passed by the learned Joint District Judge, Valsad at Navsari below application Exh.54 for bringing the legal heirs of the deceased-respondent No.1 on record.

The petitioner herein is the original defendant/appellant against whom a decree for eviction of the suit premises has been passed in Regular Civil Suit No.57/79 on the file of the Court of Civil Judge (J.D.), Valsad. The petitioner herein preferred Civil Appeal No.15/85 in the District Court at Navsari against the said decree of eviction. It appears that during the pendency of the appeal, one of the original plaintiffs, Nazmuddin Ismailbhai Kagazwala, expired on 19.8.1991 at Pune. The Advocate, therefore, filed a Purshis reporting death of respondent No.1, in the proceedings on 1.1.1992. The petitioner, therefore, filed application exh.54 for bringing the legal heirs of the deceased respondent No.1 on record. It is, inter alia, contended in the said application Exh.54 that the application for bringing heirs and legal representatives of the deceased on record is filed within 90 days from the date of knowledge of the death of the respondent No.1. The petitioner, therefore, prayed for necessary amendment and correction in the cause-title of the appeal by bringing heirs and legal representatives of the respondent No.1. The aforesaid application was contested by filing written objections as per exh.55, whereby it was contended that respondent No.1 had actually expired on 24.1.1991 and as such the appellant should have moved with necessary application within prescribed period of limitation and that the application was not submitted within ninety days of the death of the respondent No.1 and as such appeal would stand abated. It was also contended that no application within two months next thereafter was submitted to set aside abatement and therefore the application was not maintainable.

The learned District Judge, by the impugned order, rejected the application exh.54 turning down the request for bringing the heirs and legal representatives of the deceased-respondent No.1 on record. Hence the present Civil Revision Application.

It is contended on behalf of the petitioner that the impugned order rejecting the request for bringing heirs and legal representatives of the deceased on record is unjust and the learned Judge failed to exercise the jurisdiction vested in him. It is further contended that the deceased-respondent No.1 died at Pune in 1991 and the necessary Purshis was filed as late as in 1993. The petitioner, therefore, could not actually find out as to what was the exact or correct date of death of the deceased-respondent No.1, who was living far away in Pune. It is submitted that the application was submitted

as expeditiously as possible and within ninety days from the date of knowledge of the death of respondent No.1.

Order XXII of the Code of Civil Procedure deals with death, marriage and insolvency of parties. Rule 2 of Order XXII provides the procedure where one of several plaintiffs or defendants dies and right to sue survives. Rule 4 of Order XXII provides for substitution of the legal representatives of the deceased-defendants. The reasoning recorded by the learned Judge while rejecting the application Exh.54 that the application should be treated as beyond 90 days cannot be sustained. The learned Judge has resorted to Rule 10A of Order XXII in this connection, providing that wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it and the Court shall thereupon give notice of such death to the other party. However, the said intimation by the Advocate of the deceased respondent No.1 was made in the year 1993 and thereafter on 5.3.1993 within the period of 90 days the application for bringing heirs and legal representatives of the deceased-respondent No.1 was made. In this view of the matter, the impugned order deserves to be quashed. The finding of the learned Judge that the ratio laid down in the case of Karuppaswamy and Others vs. C. Ramamurthy, reported in 1993(2) G.L.H.188 would not be applicable to the facts of the present case does not appear to be correct. In that case, the Supreme Court, having considered the provisions of Order 22, R.4 of the Code of Civil Procedure read with sec.21(1) of the Limitation Act, held that a comparative reading of the proviso to sub-section (1) shows that its addition has made all the difference. It is also clear that the proviso has appeared to permit correct of errors which have been committed due to a mistake made in good faith but only when the Court permits correct of such mistake. In that event its effect is not to begin from the date on which the application for the purpose was made, or from the date of permission but from the date of the suit, deeming it to have been correctly instituted on an earlier date than the date of making the application.

In the facts of the case, and for the reasons stated hereinabove, the application deserves to be allowed. Application Exh.54 in Regular Civil Appeal No.15/85 pending before the Joint District Judge, Valsad at Navsari, stands granted. Rule is accordingly made absolute. There shall be no order as to costs.

Regular Civil Appeal No.15/85 on the file of the

learned Joint District Judge, Valsad at Navsari, being quite old, it is directed that it shall be disposed of as expeditiously as possible.

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