

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 215 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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? : NO

MAMAD HUSSEIN ABDULLA

Versus

BAKALI JUSAB ISMAIL

Appearance:

1. Civil Revision Application No. 215 of 2001
MR CH VORA for Petitioners No. 1-5
RULE SERVED for Respondents No. 1,3-6
..... for Respondent No. 2
-

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 31/01/2002

C.A.V. JUDGEMENT

This Civil Revision Application is filed against
the order passed below exh. 29 in Special Civil Suit no.

40 of 1995 by the Extra Assistant Judge, Bhuj-Kutch on 4.4.00.

The application exh. 29 was given by the legal representatives of original plaintiff no. 2 in the Special Civil Suit to bring them on the record of the case as their father has expired on 26.6.99. This application was given on 29.1.00 which was after the limitation period of 90 days was over.

The learned trial Judge after discussing the binding authorities and law in detail, dismissed the application exh. 29, against which this Civil Revision Application is filed.

Mr.C.H.Vora, L.A. for the applicants has relied on the following authorities :

1. Karim Abdulla V/s Heirs of deceased Bai Hoorbai Jama & Others reported in 1975 G.L.R. 835
2. Mohatta Brothers V/s Sheth Chaturbhujdas Chimanlal and others reported in 1981 G.L.H. 30
3. Ajitbhai Chimanlal Patel V/s Manubhai Ambalal Patel & others reported in 1990(1) G.L.H. 252
4. Patel Lallubhai Ranchhodbhai through heirs and legal representatives V/s Shankarlal Kalabhai through heirs and legal representatives reported in 1995(1) G.L.H. 576.

I have perused the order of the trial court and the authorities cited by the learned advocate for the applicants.

Order XXII Rule 3 Sub-rule (2) is first to be seen which reads as under :

" 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."

In the present case it is admitted by the present applicants in their exh. 29 application that the application was given after the limitation of 90 days was over. This means that the suit is abated against the deceased plaintiff no. 2.

Order XXII Rule 9 Sub-rule (2) & (3) are as under:

" (2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal ; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the Indian Limitation Act, 1877 shall apply to applications under sub-rule (2).

There cannot be any two opinions about the decisions arrived at by this court. But the authorities are to be applied depending on the facts and circumstances of each case.

In view of the aforesaid discussion, I agree with the findings of the learned trial judge that the applicants herein have to first file an application for setting aside the abatement and for condoning the delay in filing the application for their joining as legal representatives and if on such applications, the court is satisfied with the reasons shown for the delay and allows the applications, then only they can be joined as legal representatives in the suit.

Therefore, I do not intend to interfere with the order of the trial court and this Civil Revision Application is required to be dismissed.

Civil Revision Application is dismissed. Rule discharged. Stay granted earlier is vacated. No order as to costs.

(SHARAD D DAVE, J)

srilatha