

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No.484 of 2000

Date of decision 27.6.2006

State Bank of India

Appellant

Versus

Mata Industries, Nerchowk and ors.

Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?¹ No

For the Appellant: Mr. K.D.Sood, Advocate along with
Ms.Sunita Sharma, Advocate.

For the Respondent: Ms.Kiran Lata Sharma, Court Guardian for minor
respondent No.5.

Deepak Gupta, J.(Oral)

The brief facts of the case are that plaintiff had filed a suit for recovery of Rs.2,16,115/- against the original defendants. The case of the Bank was that defendant No.1 Mata Industries was a partnership firm and Mohan Singh (deceased) one of the partners had applied for the loan. It was further alleged that after the death of Mohan Singh, the partnership firm was dissolved and reconstituted and thereafter defendant No.2 Appar Singh and defendant No.3 Smt.Toravanti became the partners of the firm with effect from 27.5.1989. Defendants No.4 and 5, Satpal Singh and Jasvinder Singh were alleged to have stood guarantee for the repayment of the loan. All the defendants were represented by one counsel. On 4.6.1999 statement was made by learned counsel for the defendants that defendant No.2 Smt.Toranvanti had expired. Thereafter the counsel for the defendants sought time for bringing on record the legal representatives of said deceased defendant No.2 Smt.Toranvanti. An application under Order 22 Rule 4 CPC was filed to bring on record the legal heirs of deceased defendant No.2 Smt.Toranvanti. The names of all the legal heirs were given. It would be pertinent to mention that defendant No.2 Appar Singh and

¹ Whether reporter of local papers are allowed to see the judgment ?

defendant No.4 Satpal Singh were two of the legal heirs mentioned in this application. The date of death of deceased Smt.Toranvanti was not mentioned in the application nor any prayer was made for setting aside the abatement, if any, of the suit. The learned trial court vide impugned order held that the application was time barred, the suit had already abated and therefore the application for bringing on record the legal representatives of the deceased was dismissed. Hence the present appeal.

I have heard Sh.K.D.Sood, learned counsel for the appellant and Ms. Kiran Lata Sharma, court guardian for minor respondent No.5.

It is well settled law that a partnership firm can be sued in its own name through one of its partners and it is not necessary to implead all the partners of the partnership as defendants in the suit. Therefore, on the death of one of the partners who is arrayed as a defendant, the suit as such will not abate. In this case it is pertinent to mention that two of the legal heirs of deceased Smt.Towanvanti, namely, Appar Singh and Satpal Singh were already on record as defendants No.2 and 4 respectively. Therefore, the estate of the deceased was, in any event, duly represented and as such the suit would not have abated.

The application was moved soon after the court was informed by the learned counsel, representing all the defendants, that Smt.Toranvanti had expired. There is no doubt that the plaintiff was at fault to the extent that the plaintiff neither made any efforts to obtain the death certificate of Smt. Towanvanti nor any written prayer was made for condoning the delay in moving the application for bringing on record her legal representatives. However, this could have been orally done and it would be taking a hyper technical view of the matter to dismiss the suit only on this ground.

In view of the aforesaid discussion the order of the learned trial court, ordering that the suit is dismissed as having abated, is set aside. The legal representatives of the deceased defendant as mentioned in the application under Order 22 Rule 4 CPC are ordered to be brought on record. It is made clear that the liability, if any, of the legal heirs will be limited to the extent that they inherit the estate of deceased Smt.Toranvanti. As far as Appar Singh and Satpal Singh

defendants are concerned, their individual liability shall be decided by the trial court on its own merit.

The suit is therefore remanded back to the learned trial court who shall register at its original number and decide the same in accordance with law.

June 27,2006(g)

(Deepak Gupta), J.