

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 162 of 2016.

Reserved on : 14th March, 2019.

Decided on : 29th March, 2019.

Chet Ram and others

.....Appellants.

Versus

Mata Bhagwati Khua Rani and others

....Respondents.

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Appellant: Mr. G.R. Palsra, Advocate.

For Respondent No.1: Mr. Satyen Vaidya, Sr. Advocate
with Mr. Vivek Sharma, Advocate.

Sureshwar Thakur, Judge.

The instant appeal stands directed, against, the verdict pronounced by the learned First Appellate Court, upon, Civil Appeal No. 86 of 2012, on 01.03.2016, wherethrough, it made an order of remand, vis-a-vis, the learned trial Court, for

¹ Whether reporters of the local papers may be allowed to see the judgment?

...2...

making a decision, upon, the factum, of, abatement, arising from demise, of, defendant No.9(e) Hansa.

2. The learned counsel appearing for the aggrieved appellants, has contended with much vigour (i) that the afore order of remand is infirm, (ii) given, the afore civil appeal being misconstituted, and, it being filed beyond limitation, and, the application appended therewith, as, cast under the provisions of Section 5 of the Limitation Act, being decided subsequent, to the impugned verdict being rendered, (iii) hence, registration of the civil appeal, without, the apposite delay being condoned, and, also any verdict pronounced, thereon rather being obviously flawed. However, the afore submission is bereft of any vigour, (iv) given a perusal of the last sentence occurring in the impugned verdict, making, a clear echoing, qua it standing pronounced, on 1st March, 2016, and, application, cast under the provisions of Section 5, of, the Limitation Act, hence seeking condonation of the apposite delay, as, caused in the institution of the apposite appeal, being also allowed rather on the same day, (v) and,

...3...

the order, for, registration of the appeal, if not earlier registered also being made. Consequently, with the appeal as well as the application appended therewith, as, cast under the provisions of Section 5 of the Limitation Act, being simultaneously allowed, reiteratedly, hence renders the afore submission to both legally frail, and, weak.

3. Furthermore, the learned counsel appearing for the appellant has contended with much vigour that (i) one Dinesh Kumar, unauthorisedly, and, without any order being made, for his representing the interest, of, Mata Bhagwati Kua Rani in the apposite litigation, rather being permitted, to, process the afore appeal, thereupon, the appeal being mis-constituted, also hence he contends, that, the order of remand being vitiated. The afore argument is also enfeebled, by, the factum, of, the learned First Appellate Court, hence, on 1.3.2016, making an order for removal of one Vijay Kumar, the hitherto guardian, of, the afore litigant, (ii) given his not properly looking after the interest, in, the litigation, of the idol, and, thereafter, it, ordering, for his being

...4...

substituted, by, one Dinesh Kumar, the worshiper, of, the idol. The afore order, re-emphasisingly is, anvilled, upon, the reason qua the afore Vijay Kumar, not sufficiently, and, adequately protecting, and, watching the interest, in, the litigation, of, the idol named Mata Bhagwati Khua Rani, and, thereupon, the afore reason, cannot be, concluded hence to be suffering from any infirmity, as it appears, that, it is anvilled, on, certain material existing, before the learned first Appellate Court.

4. For the reasons recorded hereinabove, there is no merit in the instant appeal, and, it is dismissed accordingly. The order impugned before this Court is affirmed, and, maintained. The parties are directed to appear before the learned trial Court, on 17th April, 2019. All pending applications also stand disposed of. Records be sent back forthwith.

29th March, 2019.
(jai)

(Sureshwar Thakur)
Judge.