

CASE NO.:
Appeal (civil) 5477 of 2003

PETITIONER:
Kaushalya Devi

RESPONDENT:
Saro Devi & Ors.

DATE OF JUDGMENT: 01/08/2003

BENCH:
R.C. LAHOTI & ASHOK BHAN.

JUDGMENT:

O R D E R

(Arising out of S.L.P.(C) No.55 of 2000)

Leave granted.

Shorn of details the bare necessary facts for decision in this appeal are noted hereinafter. As regards the very same immovable property, two suits came to be filed. One suit was filed by the appellant seeking eviction of one Churaman Pasi alleging him to be a tenant in the suit property. Another suit, in the nature of cross suit, was filed by heirs of Churaman Pasi disputing the title of the appellant. Both the suits were tried together and disposed of by one common judgment resulting into two decrees based on one judgment. The appellant lost in both the suits.

He filed two appeals registered as TA No.9/80 and TA No. 10/80 in the District Court. In TA No.9/80 Churaman Pasi was the sole respondent. He died. The appellant moved an application seeking to bring on record the legal representatives of Churaman Pasi and seeking condonation of delay in filing the application, also seeking setting aside of abatement. The application was rejected and consequently the appeal was also dismissed as having abated. Feeling aggrieved by such judgment of the District Court, the appellant filed an appeal in the High Court which, unfortunately, came to be dismissed in default of appearance. The appellant moved an application for restoration of the appeal in the High Court which application was registered as MJC 210/97. This application too came to be dismissed by the High Court by a brief order a reading whereof indicates that the High Court looked into the merits of the appeal also and formed an opinion that restoration was unmerited. This appeal, by special leave, has been filed against the above-said order of the High Court.

We have heard the learned counsel for the parties. We are satisfied that the Title Appeal No.9/80 could not have been dismissed as having abated for failure to bring on record the legal representatives of the respondent Churaman Pasi and this we say for two reasons. Firstly, the application, duly supported by an affidavit, did make out a sufficient cause for condoning the delay, setting aside the abatement, if any, and bringing the legal representatives of the deceased-respondent on record. It is well settled that a liberal and not too rigid, technical or pedantic approach, has to be adopted in such like matters as an opportunity of hearing on merits, should not be denied to a litigant unless a case of gross negligence or contumacy is made

out. Secondly, in the background of the facts of the case, the two appeals were to be heard together being two appeals arising out of decrees in cross suits based on the same common judgment. In one of the appeals, the legal representatives, already available on record, were well aware of the litigation and their defence. Bringing them on record in the connected appeal was a matter of almost a formality which should have been permitted once an application in that regard was made. Dismissing the appeal as abated has occasioned a grave failure of justice and just for technicality. Such dismissal of appeal cannot be sustained.

As we have formed an opinion that the District Court could not have dismissed TA No.9/80 as abated and the application for bringing the legal representatives of the deceased-respondent should have been allowed, it will be futile to remand the matter back to the High Court by restoring the appeal pending before it and to deal with the question of abatement.

In the backdrop of the above-said facts, the appeal is allowed. The dismissal of MJC No.210/97 as also the dismissal of the appellant's appeal in the High Court are both set aside. The appeal in the High Court shall stand restored and allowed and then treated as disposed of. TA No.9/80 in the District Court shall stand restored on the file of the District Court. Substitution of legal representatives in place of the deceased-respondent shall be permitted. TA No.9/80 and TA No. 10/80 shall, both, then be taken up for hearing and decision in accordance with law.

The appeal is allowed. No order as to the costs.