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Death Of One Of Partners Doesn't Foreclose Continuation Of Civil Proceedings Initiated By Firm: Supreme Court

By Swasti Chaturvedi | 31 Dec 2022 7:45 PM



The Supreme Court on December 16, 2022, while dealing with a civil appeal held that the death of one of the partners does not foreclose the continuation of the civil proceedings initiated by the partnership firm.

f The two-Judge Bench comprising **Justice Surya Kant** and **Justice J.K. Maheshwari** observed –

🕒 *“There is no gainsaid that where two persons have sued in the name of a partnership firm and if one of such persons dies during the pendency of the proceedings, it is not necessary to join the legal representatives of the deceased as a party to such proceedings, which shall continue in accordance with law. In other words, the death of one of the partners does not foreclose the continuation of the civil proceedings initiated by the firm. In this view of the matter, the death of Shiv Singh Galundia could not be a valid reason to declare the First Appeal to have abated. Further, the legal representatives of the deceased - Shiv Singh Galundia had already applied for their impleadment in substitution of the deceased and there was no reason for the High Court to decline such a prayer when the application was moved in time without any other legal impediment in accepting their prayer.”*

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The Court further said that the High Court has completely misconstrued view taken in the Supreme Court case of *AVK Traders vs. Kerala State C Supplies Corporation Limited*, (2013) 15 SCC 217.

Advocate Anuj Bhandari represented the petitioners while **Advocate Mahipal** appeared on behalf of the respondents.

Brief Facts –

M/s Kamal Engineering Works was a partnership firm comprising two partners. The firm filed a civil suit for specific performance of contract, damages, declaration, and for a permanent injunction. The Additional District & Sessions Judge, Jaipur dismissed the same. The aggrieved partnership firm filed a First Appeal before the High Court. During the pendency of that appeal, one of the partners died. His legal heirs, which included his wife, two sons, and a daughter moved an application under Order XXII, Rule 3 CPC in the pending appeal for their substitution as legal representatives of the deceased partner.

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The High Court vide the impugned order took the view that with the demise of one of the two partners, the partnership firm stands dissolved automatically and, thereafter, the right to sue does not survive to the other partner seeking the relief as were prayed for by the firm in the suit. The appellants, the two sons of the deceased partner being aggrieved by the impugned order and hence, approached the Apex Court.

The Supreme Court after hearing the contentions of both parties observed, *appears to us that the High Court has completely overlooked Order XXX Rule 1 of the Code of Civil Procedure ... What this Court has observed is that where one of the several partners dies in the suit instituted in the name of the partnership firm “as compared to when one of the two partners of the partnership firm dies”, the decree so granted would not be executable even if the partnership firm succeeds in the suit. It does not mean that the suit stands abated.”*

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It was further noted by the Apex Court that the High Court shall proceed to decide the application filed by the legal representatives of the deceased under Order XXII, Rule 3 CPC, for their substitution in place of the deceased and after deciding that application, the High Court will take up the appeal on merits.

The Court also said, *"It is clarified that we have not expressed any opinion on the merits of the case."*

Accordingly, the Court allowed the appeal and set aside the judgment passed by the High Court.

Cause Title- Sumer Singh Galundia & Anr. v. Jeevan Singh (Since Deceased Through Lrs.) & Ors.

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Justice Surya Kant Justice J.K. Maheshwari Partnership



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