

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 11687 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

RED CHILLIES ENTERTAINMENT PRIVATE LIMITED & ORS.

Versus

LATE MUSTAK AHMED ABDUL LATIF SHEIKH & ORS.

Appearance:

MR SALIL M THAKORE(5821) for the Petitioner(s) No. 1,2,3,4,5,6,7,8
for the Respondent(s) No. 1

NOTICE SERVED for the Respondent(s) No. 1.1,1.2,1.3,2,3

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 10/07/2024

ORAL JUDGMENT

1. A short but interesting question is involved in this petition that in case of defamation whether right to sue survives for the heirs of the plaintiff.

2. From the pleadings of the petition, the necessary facts are gathered as under :

2.1 It is the case of the plaintiff that his father viz. late Abdul Latif Abdul Wahab Sheikh has earned reputation for himself and his family. He was engaged in various businesses and he was well known in society. He also contested election for Ahmedabad Municipal Corporation in 1986. Thereafter, said Abdul Latif Abdul Wahab died. In October, 2013, the film 'Raees' was announced. The plaintiff filed Civil Suit No.782 of 2016 for defamation against petitioner-defendant praying for decree of damages of Rs.101 Crores. On 06.07.2020, the original plaintiff expired. The heirs of plaintiff filed Chamber Summons at Exhibit-67 & 68 and 85 & 86. Learned City Civil Court vide order dated 27.04.2022 allowed the chamber summons at Exhibits-67 & 68 and 85 & 86. Hence, the present petition.

3. What could be discerned from perusal of the fact that Late Mr.Mustak Ahmed Abdul Latif Sheikh has filed Civil Suit No.782 of 2016 claiming following reliefs :

“(A) The Hon'ble Court may be pleased to declare that, the promotional material, previews, and promos of the film 'Raees' either written, directed and / or acted and produced by the defendants are defamatory to the reputation of the plaintiff, his family and also to the highly preserved reputation of late Abdul Latif Abdul Wahab Sheikh who is the father of the plaintiff.

(B) Further the Hon'ble Court may be pleased to declare that, such acts of the defendants are also defamatory in nature and all those release of news items by the defendants for the promotion of the film 'Raees' and the other promotional material, promos and trailers made available by the defendants on social media, etc. have caused and it can cause heavy loss and damages to the plaintiff. The Hon'ble Court may further be pleased to declare that, the release and / or screening of the film named 'Raees' written, directed, acted and produced by

the defendants would be their willful and tortuous act and it may be further declared that, such act of production of the film undertaken by the defendants is in conspiracy with each other, and with the malafide intentions on their part only with a view to disrepute the plaintiff and to defame the plaintiff, his family and highly preserved reputation of late father of the plaintiff.

(C) This Hon'ble Court may be further please to pass an appropriate decree for compensation to the damages of the reputation of the plaintiff and preserved reputation of late Abdul Latif, to the tune of Rupees 101 Crores together with running interest at the rate of 18% p.a. from the date of the suit till the realization of the amounts from the defendants. It may be further declare that, the defendants shall remain liable to the plaintiff as joint and severally. The Hon'ble Court may be further please to mould such decree in a way that the decretal dues can be recovered from all kind of properties and body personem of the defendants.

(D) The defendants, their marketing agents, distributors, and / or their power of attorney holders or anyone claiming right to release and screening and showing the promos, previews and trailers and or the entire film named 'Raees' be restrained by way issuance of permanent injunction and be directed and restrained from further promoting any kind of promotional material, previews or promos or overall release of the movie named 'Raees' which is either written, directed, acted and produced by them and be further restrained by way of issuance of permanent injunction to the defendants to stop all further production and other activities with regard to the movie named 'Raees';

4. In essence, the plaintiff has asked the relief in the suit that on the release of the trailer of film 'Raees', plaintiff and his family who preserves high reputation and prestige of late Abdul Latif Abdul Wahab Sheikh would be tarnished and corroded and as such being heirs of late Abdul Latif Abdul Wahab Sheik, the plaintiffs have preferred suit seeking compensation to the tune of Rs.101 Crores together with running interest at 18% per annum

from the present petitioner. The plaintiff died on 06.07.2020. Therefore, various chamber summons have been preferred under Order 22 of Code of Civil Procedure (for short 'CPC) at Exhibit-67 & 68 and 85 & 86 to bring the heirs of the deceased plaintiff. The chamber summons were allowed by following final order :

“The applications filed on behalf of the plaintiff at Exhs.68 and 86 hereby stand allowed.

Consequently, the abatement of the original plaintiff is hereby treated to be set aside and the legal heir as mentioned in Exh.86 is hereby ordered to be brought on record.

The plaintiff is hereby directed to carry out necessary amendment forthwith.

The plaintiff is hereby further directed to file amended copy of the plaint within two weeks' from today.

No order as to costs.”

5. Being aggrieved and dissatisfied by the said order below Exhibit-24, the defendants of the suit are before this Court. By preferring this petition under Article 227 of the Constitution, the petitioners have prayed following reliefs:

“a. This Hon'ble Court be pleased to quash and set aside impugned order dated 27th April 2022 passed by the City Civil Court at Ahmedabad below Exhibits 67, 68, 85 and 86 in Civil Suit No. 782 of 2016 and consequently dismiss the applications filed by the respondents at Exhibits 68 and 86 in Civil Suit No. 782 of 2016;

b. Pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to stay the operation, effect and implementation of the impugned order dated 27th April 2022 passed by the City Civil Court at Ahmedabad below Exhibits 67, 68, 85 and 86 in Civil Suit No. 782 of 2016 and all consequential actions and the further proceedings of Civil Suit No. 782 of 2016;

c. That pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to grant ad-interim in terms of prayer clause (b) above;

d. For such further and other reliefs as may be deemed necessary and proper in the interest of justice and as the circumstances of the case may require;

e. For costs.”

6. Heard learned advocate Mr.Salil Thakore appearing for the petitioners. Though served none remained present for the respondents.

7. Learned advocate Mr.Salil Thakore, after referring to Section 306 of the Indian Succession Act would submit that right to sue in a suit for seeking damage for defamation being personal in nature would not survive in favour of heirs of the deceased, after the plaintiff dies. He would further submit that the cause of action stated in the plaint is personal in nature and it remains alive till the plaintiff who claims that his reputation has been defamed but it would not pass on to the legal representatives or the legal heirs of the person. He would further submit that it is not a heritable legal estate and therefore, neither Section 2(11) of CPC nor Order 22 Rule 1 of CPC would be attracted in the matter. He referred to the judgment of Hon'ble Supreme Court in case of **Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair- (1986) 1 SCC 118**, to submit that since the right to sue does not survive in favour of the legal representative of the deceased, they cannot be substituted as legal heirs and they have no right to continue the suit proceedings. He would further submit that in fact right to

sue dies on its own when the plaintiff dies and therefore, he submits that learned Trial Court has committed serious error in permitting heirs of the deceased plaintiff to be on record and to continue the suit proceedings. To buttress his submission, learned advocate Mr.Thakore has also referred to the judgment of Hon'ble Supreme Court in **Puran singh and others vs. State of Punjab and others - (1996) (2) SCC 205.**

8. Upon above submissions, he submits to allow this petition and to quash and set aside the impugned order and to pass the necessary order for abatement of the suit.

9. Although other side is served, none remained present.

10. Having heard learned advocate Mr.Thakore appearing for the petitioners, at the outset, let refer Section 306 of Indian Succession Act, which reads as under :

“306. Demands and rights of action of or against deceased survive to and against executor or administrator.— All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, 1860 (45 of 1860) or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

11. The phrase ‘except cause of action for defamation, assault as defined in Indian Penal Code or other personal injury not causing the death of the party’ assumes importance. In such cases, where action of defamation assault are pleaded as a cause

of action in the suit, right to sue would not survive upon death of such person who has been allegedly defamed. In Section 499 of Indian Penal Code defamation has been defined as under :

“499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.”

12. In Black’s Law Dictionary, 9th Edition, the word ‘defamation’ is defined as under :

“Defamation, 1. The act of harming the reputation of another by making a false statement to a third person. If the alleged defamation involves a matter of public concern, the plaintiff is constitutionally required to prove both the statement’s falsity and the defendant’s fault. 2. A false written or oral statement that damages another’s reputation.”

13. P.H.Winfield, in A Textbook of the Law of Tort at 242 (5th Ed. 1950), defines the word ‘defamation’ as under :

“Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person.”

14. It is apt to note that defamation is statement made by third party lowering the reputation of the person in society or public at large, so that society would avoid the person. The definition of ‘defamation’ is indicative that it is personal injury because it harms a person’s reputation which is fundamental aspect of his personal and professional life. Defamatory statement whether

libel (written) or slander (spoken) or visual (in present case), made with object to damage a person's good name and reputation, or harm professional or business relationships, which may or may not lead to financial loss, but certainly lead to reputation loss, and lower self-esteem. It cannot be gainsaid that as a personal injury, defamation is considered a tort and person harmed may seek legal remedies, including damages (exactly which is asked as relief in the present suit).

15. Taking note of the above legal aspect if we go through the pleadings of the civil suit which is a suit based upon the pleadings that the trailer of film 'Raees' has tarnished or lowered the reputation of late Abdul Latif Abdul Wahab and also the reputation of plaintiffs being his heirs and as such plaintiffs are entitled to get damages for defamation.

16. Legal maxim *actio personalis moritur cum persona* (a personal action dies with the person) is attracted in the present matter. When right to sue is personal, means that the right to bring legal action is tied to the individual person. It cannot be transferred or assigned to other persons. In case of personal injury, defamation, privacy violation etc.; cause to bring legal action is personal right. Therefore, in such cases, the right to sue is deemed personal to plaintiff and does not pass on to his legal representatives after his death as defined in Section 2(11) of the CPC. The principle is based on this idea that personal rights are unique to the individual and not capable to be exercised by anybody including individual's heir.

17. At this juncture, I may refer to the observations and finding of the Hon'ble Apex Court in **Melepurath Sankunni Ezhuthassan (supra)** :

"4. In the present case, if the appellant's right to sue had survived on his death, his right to prosecute the present Appeal would also survive, but if the right to sue would not have survived on his death, this Appeal also would not have survived and would abate. The question, therefore, is whether in a defamation action the right to sue survives if the plaintiff dies.

*5. Under the common Law, the general rule was that death of either party extinguished any cause of action in tort by one against the other. This was expressed by the maxim *Action personalis moritur cum persona*" (A personal action dies with the person). However, by the Law Reform (Miscellaneous Provision) Act, 1934, all causes of action vested in a person survive for the benefit of his estate except causes of action for defamation or seduction which abate on the death of such person. As the Law Reform (Miscellaneous Provisions) Act, 1970, abolished the right of action for seduction of a spouse or a child from January 1, 1971, the only cause of action which would abate in England on the death of a person suing would be now a cause of action for defamation.*

6. So far as this country is concerned, which causes of action survive and which abate is laid down in section 306 of the Indian Succession Act, 1925, which provides as follows :

"306. Demands and rights of action of or against deceased survive to and against executor or administrator. - All demands whatsoever and all rights to prosecute or defend any action or special processing existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

Section 306 speaks of an action and not of an appeal. Reading section 306 along with Rules 1 and 11 of Order XXII of the Code of Civil Procedure, 1908, it is, however, clear that a cause of action for defamation does not survive the death of the appellant.

7. Where a suit for defamation is dismissed and the plaintiff has filed an appeal, what the appellant-plaintiff is seeking to enforce in the appeal is his right to sue for damages for defamation and as this right does not survive his death, his legal representative has no right to be brought on the record of the appeal in his place and stead if the appellant dies during the pendency of the appeal. The position, however, is different where a suit for defamation has resulted in a decree in favour of the plaintiff because in such a case the cause of action has merged in the decree and the decretal debt forms part of his estate and the appeal from the decree by the defendant becomes a question of benefit or detriment to the estate of the plaintiff- respondent which his legal representatives is entitled to uphold and defend and is, therefore, entitled to be substituted in place of the deceased respondent-plaintiff.

8. Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.

9. The position, therefore, is that had the Appellant died during the pendency of his suit, the suit would have abated. Had he died during the pendency of the appeal filed by him in the District Court, the appeal would have equally abated because his suit had been dismissed by the Trial Court. Had he, however, died during the pendency of the second appeal filed by the respondent in the High Court, the appeal would not have abated because he had succeeded in the first appeal and his suit had been decreed. As, however, the High Court allowed the second appeal and dismissed the suit, the present Appeal by Special Leave must abate because what the Appellant was

seeking in this Appeal was to enforce his right to sue for damages for defamation. This right did not survive his death and accordingly the Appeal abated automatically on his death and his legal representatives acquired no right in law to be brought on the record in his place and stead.”

18. Applying the law laid down by Hon’ble Apex Court in this matter, the position of law becomes clear. The cause of action set by the late plaintiff Mr. Mustak Ahmed Abdul Latif Shaikh dies on his death. As the right to sue for a relief of damage and compensation on alleged defamation was personal one, it is not a cause of action which could be inherited by his heirs. The substitution of the heirs of the litigating party could be made only if right to sue survives (See Order 22 Rule 1 of CPC). In the present case as discussed hereinabove, right to sue does not survive in favour of the heirs of the deceased.

19. With profit, I may refer to another judgment in case of **Puran singh and others** (supra), wherein in para 4 Hon’ble Supreme Court held as under :

“4. A personal action dies with the death of the person on the maxim "action personalis moritur cum persona". But this operates only in a limited class of actions ex delicto, such as action for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the granting of the relief would be nugatory. (Girja Nandini v. Bijendra Narain, 1967 (1) SCR 93). But there are other cases where the right to sue survives in spite of the death of the person against whom the proceeding had been initiated and such right continues to exist against the legal representative of the deceased who was a party to the proceeding. Order 22 of the Code deals with this aspect of the matter. Rule 1 of Order 22 says that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. That is why whenever a party to a suit dies, the first question which is to be decided is as to whether the right to

sue survives or not. If the right is held to be a personal right which is extinguished with the death of the person concerned and does not devolve on the legal representatives or successors, then it is an end of the suit. Such suit, therefore, cannot be continued. But if the right to sue survives against the legal representative of the original defendant, then procedures have been prescribed in Order 22 to bring the legal representative on record within the time prescribed. In view of Rule 4 of Order 22 where one of two or more defendandants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant dies and the right to sue survives, the Court, on an application being made in that behalf, shall cause the legal representatives of the deceased defendant to be made a party and shall proceed with the suit. If within the time prescribed by Article 120 of the Limitation Act, 1963 no application is made under sub-rule (1) of Rule 4, the suit shall abate as against the deceased defendant. This Rule is based not only on the sound principle that a suit cannot proceed against a dead person, but also on the principle of natural justice that if the original defendant is dead, then no decree can be passed against him so as to bind his legal representative without affording an opportunity to them to contest the claim of the plaintiff. Rule 9 of Order 22 of the Code prescribes the procedure for setting aside abatement.”

20. For the foregoing reasons, this Court is of the considered view that learned Trial Court has committed serious but jurisdictional error in allowing the chamber summons below Exhibit-67 & 68 and 85 & 86. The petition is allowed. The impugned order passed below Chamber Summons 67 & 68 and 85 & 86 is quashed and set aside. Since right to sue does not survive, learned Trial Court is directed to pass the order for abatement of Civil Suit No.782 of 2016 within three days from receipt of this order.

GAURAV J THAKER

(J. C. DOSHI, J)