

GAHC010233562023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/345/2023

SMTI BABITA AGARWAL
W/O SHRI DILIP AGARWAL, R/O UMA CHATTERJEE BUILDING, BEHIND
MAITRI RESIDENCY, G.S. ROAD, PALTAN BAZAR, GUWAHATI-781008,
ASSAM

VERSUS

ON THE DEATH OF RANJIT CHATTERJEE, LEGAL HEIRS AND
REPRESENTATIVES AND ORS
NAMELY

1.1:SMTI. BABLI CHATTERJEE
W/O LATE RAJAT CHATTERJEE
R/O UMA CHATTERJEE BUILDING
BEHIND MAITRI RESIDENCY
G.. ROAD
PALTAN BAZAR
GUWAHATI-781008
ASSAM

1.2:RAKTIM CHATTERJEE
S/O LATE RAJAT CHATTERJEE
R/O UMA CHATTERJEE BUILDING
BEHIND MAITRI RESIDENCY
G.. ROAD
PALTAN BAZAR
GUWAHATI-781008
ASSAM

2:SMTI MOUSHMI BENERJEE
W/O SRI AMITAVA BANDHOPADHAYA
R/O ONGC COLONY

SIBSAGAR
DIST-SIBSAGAR
ASSAM

3:TARACHAND NAHATA
S/O LATE MALCHAND NAHATA
R/O UMA CHATTERJEE BUILDING
BEHIND MAITRI RESIDENCY
G.S. ROAD
PALTAN BAZAR
GUWAHATI-781008
ASSAM

4:KAMAL JAIN
S/O LATE RATAN LAL JAIN
R/O UMA CHATTERJEE BUILDING
BEHIND MAITRI RESIDENCY
G.S. ROAD
PALTAN BAZAR
GUWAHATI-781008
ASSA

Advocate for the Petitioner : MR B K SINGH

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 06-11-2023

Heard Mr. B.K. Singh, learned counsel for the petitioner.

2. It is noticed that this revision petition is against the order dated 15.05.2023 of the learned Civil Judge No. 3, Kamrup (Metro) in respect of the proceedings for substitution of the legal heirs of a deceased respondent. As notices are yet to be issued in the proceedings to the legal heirs to be substituted, we are of the view that the order impugned can be examined without issuing notice to the prospective legal heirs and the prospective legal

heirs are only incidental beneficiaries of the order impugned dated 15.05.2023.

3. The petitioner instituted TS No. 16/2018, amongst others, against one Rajat Chatterjee who was arrayed as defendant no. 1. It is stated that during the pendency of the title suit, Rajat Chatterjee died on 12.12.2018. On his death as application for substitution was not instituted within the prescribed time limit, the suit had abated against the defendant no. 1 Rajat Chatterjee. In the circumstance, the petitioner plaintiff subsequently filed petition for substitution, setting aside of abatement as well as for condoning the delay for filing the two applications. The petitioner instituted Misc Case No. 288/2019 under Section 5 of the Limitation Act, 1963 for condoning the delay in preferring the accompanying petition under Order 22 Rule 4 read with Section 151 of the CPC.

4. The application for substitution of the legal heirs which was numbered as petition No. 1231/2019 came up for its consideration before the Civil Judge No. 3, Kamrup (Metro) and accordingly, the order dated 15.05.2023 was passed.

5. By the order dated 15.05.2023 the application for substitution was held to be barred by limitation and accordingly, dismissed by arriving at a conclusion that no petition for condoning the delay under Section 5 of the Limitation Act had been filed by the petitioner. But it is noticed from the Annexure-2 page-26 of the present petition that Misc Case No. 288/2019 had been instituted by the petitioner under Section 5 of the Limitation Act for condoning the delay. Accordingly, it appears that there is an error of facts recorded by the learned Trial Court that no application for condoning the delay has been instituted by the petitioner.

6. As the order dated 15.05.2023 is passed rejecting the application for substitution solely on the ground that no application for condoning the delay

has been preferred whereas on the other hand the records reveal that Misc Case No. 288/2018 has been instituted for condoning the delay, we are of view that on facts the order dated 15.05.2023 is not maintainable. Accordingly, the order dated 15.05.2023 is set aside and the matter is remanded back to the Civil Judge No. 3, Kamrup (Metro) to take note of the Misc Case No. 288/2019 filed by the petitioner plaintiff for condoning the delay and pass an appropriate order in the said Misc Case No. 288/2019 as well as the other petitions filed by the petitioner plaintiff for substitution of the legal heirs and setting aside of abatement, as may be advisable under the law.

Revision petition stands allowed as indicated above.

JUDGE

Comparing Assistant