

Court No. - 17

Case :- WRIT - C No. - 1004808 of 2005

Petitioner :- Kaiser Jahan Objection Filed

Respondent :- A.D.J. Ct.No.4 Lucknow And 15 Ors.

Counsel for Petitioner :- K.K. Srivastava, Mohd Shadab Khan

Counsel for Respondent :- C.S.C., Bhaskar Tripathi, Brijesh Kr. Saxena, Madhukar Dixit, S.P. Pathak

Hon'ble Alok Mathur, J.

1. Heard Sri Mohd. Shadab Khan, learned counsel for the petitioner, who at the outset, submits that he may be permitted to make necessary changes to convert this petition from the one under Article 226 to Article 227 of the Constitution.
2. Learned Standing counsel does not object to the same.
3. Accordingly, counsel for the petitioner is directed to carry out necessary corrections during course of the day.
4. By means of the present petition the petitioner has challenged the order dated 17.4.2002 passed by IInd Additional Civil Judge (Senior Division), Lucknow thereby rejecting the application under Order 22 Rule 4 of CPC for making necessary substitution on the death of respondent No.1.
5. It has been submitted by learned counsel for the petitioner that the petitioner had filed a suit for permanent injunction against the respondents. During pendency of the said proceedings respondent No.1, namely Ganga Prasad had died on 17.10.1999 and his legal heirs /representatives could not be brought on record. He moved an application for substitution under Order 22 Rule 4 of CPC. The trial court rejected the said application on the ground that as per the provisions of Section 37 of General Rules (Civil), 1957 it is mandatory for an application of substitution to be accompanied with prayer for consequential amendments and any application without the aforesaid is liable to be rejected. The trial court relying upon the provisions of Rule 37 of the General Rules (Civil) rejected the application of the petitioner only on the ground that it did not contain the prayer for consequential amendment of the pleadings.
6. The petitioner had filed a revision against the said rejection which has also been rejected on 21.2.2005 by Additional District Judge, Lucknow upholding the order of the trial court.

7. Learned counsel for the petitioner though admits that there was defect in this application as it did not contain any consequential amendment but submits that the defect was not incurable and the same could also have been cured and on the request made by the applicant therein but it seems that no such request for amendment of the application for substitution was made and consequently the courts below have rejected the application for substitution on being contrary to the provisions contained under Rule 37 of General Rules (Civil).

8. This Court is of the considered opinion that in case the application under Order 22 Rule 4 for substitution has been rejected merely on non compliance of the mandatory provisions of Rule 37 of General Rules (Civil), 1957 then the same would not be a bar for the applicant to file a fresh application in accordance with law and the courts below should consider the same.

9. In view of the above, this Court is of the considered opinion that no interference is required in both the impugned orders as the application of the petitioner has been rejected being not in conformity with Rule 37 of the said Rules but on the other hand, it shall not prevent the petitioner from preferring a fresh application in accordance with law and in case the same is filed the courts below is directed to consider the same in accordance with law and pass necessary orders.

10. With aforesaid observations and directions the petition stand **disposed of.**

(Alok Mathur, J.)

Order Date :- 6.11.2023
RKM.