

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
CRP No.42 of 2024

Smt. Shilip Dey Sarkar and others

..... *Petitioner(s)*

V E R S U S

Sri Parimal Chandra Baidya and others

..... *Respondent(s)*

For Petitioner(s) : Mr. Kundan Pandey, Advocate.

For Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Ms. Ankita Pal, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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05/07/2024

Heard Mr. Kunday Pandey, learned counsel for the petitioners and also heard Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. Ankita Pal, learned counsel for the respondents.

[2] Petitioners are the legal heirs of the plaintiff No.8 who passed away on 15.07.2021 during Covid period. Prayer for substitution as legal heirs of deceased-plaintiff No.8 under Order XXII Rule 3 of CPC filed on 25.04.2022 was rejected and the suit was held to have abated in respect of plaintiff No.8. Under Order XXII Rule 3 read with Article 120 of the Limitation Act, 1963 the period for carrying substitution is 90 days and on failure to carry out the substitution in the further period of 60 days thereafter the suit shall stand abated as against the concerned plaintiff. Plaintiff took a plea in his application under Order XXII Rule 3 (Annexure-5) that during that period the order of the Apex Court in *Suo Moto* WP(C) No.03 of 2020 was under operation whereby any limitation period expiring during the

period from 15.03.2020 till 28.02.2022 stood extended and in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

[3] Learned counsel for the petitioner submits that the application for substitution was filed on 25.04.2022 within the extended period of limitation of 90 days counted from 01.03.2022 but the learned trial Court without appreciating the legal position has rejected the prayer for substitution and held the suit to have abated by the impugned order dated 01.03.2024.

[4] Petitioners being aggrieved have approached this Court.

[5] I have considered the submissions of learned counsel for the parties, taken note of the relevant materials placed from record, the application for substitution under Order XXII Rule 3 and the order dated 10.01.2022 passed by the Apex Court in *Suo Moto* WP(C) No.03 of 2020. The approach of the learned trial Court in refusing to allow substitution on the ground that the same was made after expiry of the statutory period is not in consonance with the order passed by the Apex Court in *Suo Moto* WP(C) No.03 of 2020 as referred to hereinabove. The period of limitation was extended for a further period of 90 days even if it had expired before 28.02.2022 as per the order of the Apex Court. As such, on the date i.e. on

25.04.2022 when such application was made, the prayer for substitution could not be held to be beyond the statutory period of limitation or time barred. As such impugned order dated 01.03.2024 is set aside. Learned counsel for the petitioners prays that the other impugned order dated 05.04.2024 only records typographical corrections in the impugned order dated 01.03.2024. Petitioners be substituted in place of the deceased plaintiff No.8 if their status as legal heirs of deceased plaintiff No. 8 is not disputable.

[6] Accordingly, the instant civil revision petition is disposed of.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH) CJ

Dipesh

PULAK BANIK Digitally signed by PULAK BANIK
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