

OD-17

APO No.23 of 2019
GA No.2757 of 2018
In
CS No.97 of 2002
RVWO No.25 of 2017

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

DILIP KISHORE DUTT
Versus
N.N. SHARMA & ORS.

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE SUVRA GHOSH

Date : 4th February, 2019.

Appearance:
Mr. Soumya Roy, Adv.
Mr. Abu Siddique Mallick, Adv.

Mr. Syamantak Banerjee, Adv.

The Court : The ground on which the order impugned is founded is that the appellant herein could not have circumvented the provisions of the Order 22 of the Code in having the heirs of a deceased defendant brought on record after abatement had set in without seeking setting aside of abatement upon explaining the delay in applying therefor.

The appellant was the plaintiff in a suit for recovery of money. The suit was dismissed for default on September 6, 2012. The tenth defendant, Ashok Kr. Jain, died on November 17, 2013. The appellant applied for recalling the order by which the

suit was dismissed for default and such application was filed in 2015 when the same stood rejected since one of the defendants had died in the interregnum and no steps had been taken by the plaintiff.

A second application for restoration was filed thereafter. In course of such second application, substitution was sought without acknowledging that the suit stood abated and without seeking condonation of delay and praying for setting aside abatement.

The order impugned dated March 6, 2017 has been appropriately passed and the same does not call for any interference. However, nothing in the order impugned will prevent the appellant from applying afresh to explain the delay, if possible.

APO No.23 of 2019 and GA No.2757 of 2018 are dismissed.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(SUVRA GHOSH, J.)

bp.