

S/L
Item No. 1
20.11.2020
(Video Conference)
jb/rc

C.O.No. 1373 of 2020
Smt. Sujata Pahari & Ors.
-Vs-
Arvil Dey & Ors.

Mr. Debajyoti Basu
Mr. Tritimoy Talukdar
Mr. Diptimoy Talukdar

...for the petitioners.

Heard the learned counsel appearing on behalf of the petitioners.

Having regard to the nature of the directions being issued hereunder, notice to the respondents is dispensed with reserving their right to seek re-hearing of this matter, if they are aggrieved by the contents of this direction.

The first petitioner is the second plaintiff in the suit from which this petition arises. It is submitted that the first plaintiff, being her husband, is no more and the petitioners no. 2 and 3 herein were brought on record as additional plaintiffs. On May 03, 2017 the application for substitution was allowed by the learned Trial Court. Obviously, if that was an order of impleadment of the legal representatives of a deceased plaintiff, it is not necessary to issue notice to the defendants after such impleadment is granted. In fact, the order dated May 03, 2017 will show that the application for substitution was not even opposed by the defendants. Hence,

there is no scope for the learned Court below to issue notice or to await appearance of “substituted defendant”.

From the materials/papers produced along with this petition, it is seen that the attempts of the surviving plaintiffs (including the impleaded persons) to have the aforesaid order dated May 03, 2017 modified has not fructified till now; may be owing to pandemic and occasional non-availability of judicial activity.

The grievance of the petitioner is that the suit filed for specific performance of agreement for sale is pending from 2011 on the specious premise that the service of notice following the order dated May 03, 2017 is yet to be finalised.

In the aforesaid circumstances, it is ordered that the learned Court below will take up Title Suit No. 513 of 2011 pending on its file and consider any application for modification of the order dated May 03, 2017. I say so because it is fundamentally unnecessary to issue notice to the defendant on an application for substitution of the plaintiffs following the demise of the plaintiff and impleadment of legal representatives of the plaintiff. There is also no reason to assume that there is a “substituted defendant” to whom notice should be issued. If such infirmities in the procedure are cured, the learned Court below will be well advised to consider any request on behalf of the plaintiffs for expeditious trial and disposal of the Title Suit No. 513 of 2011, having also in mind that it is not proper to keep such litigations on board for a long time.

I am sure that the learned Trial Court will sympathetically consider any request of the plaintiff for shorter time frame for final disposal of the suit.

With the above directions and observations this revisional application being C.O.No. 1373 of 2020 is disposed of.

(Thottathil B. Radhakrishnan, C.J.)