

01
04.08.2021
TN

CO No.53 of 2018

Sri Bisweswar Jana
Vs.
Sri Dipak Jana and others

Mr. Sudeep Sanyal,
Mr. Snehasis Jana,
Mr. Sukanta Das

.... for the petitioner

Affidavit-of-service filed in court today be kept
on record.

Despite service, none appears for the opposite
parties.

The plaintiff in a declaratory suit has preferred
the instant revisional application against two orders.

Vide Order No.185 dated March 28, 2017, the
trial court, upon remand from the appellate court to
proceed with the suit after deciding the issue whether
defendant no.6 had died on June 1, 2001, recorded
that she actually died on such date and observed that
the suit had abated against the defendant no.6,
namely, Kamini Bala @ Sau.

By the second impugned order bearing Order No.191 dated November 16, 2017, the trial court rejected an application filed by the plaintiff/petitioner for recalling its earlier order of abatement and for expunging the name of the defendant no.6 from the records.

Learned counsel for the plaintiff/petitioner argues that it was the duty of the erstwhile advocate of the defendant no.6 to inform the details and particulars of the death and heirs of the deceased-defendant, as per the obligation cast under Order XXII Rule 10A of the Code of Civil Procedure.

However, no such information was given by such advocate, for which it ought to be presumed that the said defendant did not leave behind any legal heir. Hence, since the defendant no.6 did not contest the suit at any stage, it is contended that the trial court acted without jurisdiction in refusing to expunge her name from the records simpliciter, instead of recording abatement.

It is seen from the materials annexed to the revisional application that the appellate court clearly directed the trial court to dispose of the suit afresh after deciding the point whether Kamini Bala @ Sau, defendant no.6, died on June 1, 2001. There is no irregularity in the first impugned order regarding

abatement of death, since abatement after the statutory limitation period is automatic. Thus, the said order cannot be interfered with at this stage.

It is seen from the second impugned order dated November 16, 2017, however, that the application for recall and expunction of the name of the deceased-defendant was rejected by the trial court, without any consideration as regards whether there was actually any legal heir of the deceased-defendant.

Hence, although there is no occasion otherwise for interference with the impugned order, which will unnecessarily prolong the matter, the trial court is directed to proceed with the suit for the limited purpose of ascertaining whether abatement actually took place and as to whether the deceased-defendant no.6 actually left any heir and/or legal representative after her death. In the event it is seen that no question of abatement arose and/or the interest of defendant no. 6 did not devolve upon any stranger to the suit or only upon the other defendants, the trial court shall recall the first impugned order and proceed with the hearing of the suit.

The remaining defendants shall furnish the details and particulars of the heirs and legal representatives of defendant no.6, if any, to the

plaintiff at the earliest upon communication of this order.

It will be open to the plaintiff to take out necessary application(s) for setting aside the abatement, substitution and condonation of delay and/or renew their prayer for expunction in the event the deceased-defendant has left behind no legal heirs.

None of the findings of the impugned order shall preclude the plaintiff from doing so. Upon such steps being taken, if at all, the trial court shall independently decide the fresh application(s) filed by the plaintiff as expeditiously as possible without being prejudiced unnecessarily by any of the observations made in the impugned orders.

Accordingly, CO No.53 of 2018 is disposed of.

The petitioner shall communicate this order to the surviving defendants and/or the learned advocate who appeared for the said defendants in the court below as well as to the court below to ensure due compliance of this order.

The parties as well as the court below shall act on the written communication of the learned advocate appearing for the petitioner, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)