

24.03.2021
(S/L-03)
Ct.-18
(Susanta)

(Via Video Conference)

CO 687 of 2021

Arup Ratan Gooptu
-Vs-
Rathindra Nath Das & Ors.

Mr. Sounak Ghosh,
Ms. Gargi Manna,
..... For the Petitioner.

The order proposed to be passed in the present application under Article 227 of the Constitution of India would not cause any prejudice to the opposite parties as such service of notice upon the said opposite parties is dispensed with.

The predecessor-in-interest of the petitioner filed Title Suit No. 2 of 2007 in the 3rd Court of learned Civil Judge (Junior Division) District. 24-Parganas (South), for eviction of the predecessor-in-interest of the opposite party nos. 1, 2, 3, & 4 who was the sole defendant of the said suit.

The said defendant died during the pendency of the said suit but due to the failure of the plaintiff to substitute the heirs and the legal representatives of the said deceased defendant within the prescribed period of time, the suit got abated.

The petitioner filed an application for setting aside of the said abatement.

The said application has been registered before the learned Trial Judge being Misc. Case No. 186 of 2016.

The petitioner on October 05, 2020 filed an application for withdrawal of the said misc. case. February 20, 2021 was a date fixed for hearing of the said application, on the said date, the opposite parties to the said misc. case were not present, the learned Trial Judge instead of allowing the said application fixed June 05, 2021 as the next date for hearing of the said application and directed the said opposite parties to show-cause as to why the said application shall not be heard ex parte.

The suit has abated as a whole by operation of law. The petitioner does not want to press the misc. case for setting aside the said abatement, in such circumstances inviting objection, if any, from the opposite parties to the said misc. case is a useless formality.

The order dated February 20, 2021 is set aside, Misc. Case No. 186 of 2016 is dismissed as not pressed.

The learned Trial Judge is requested to record a formal order of dismissal of the said misc. case in the records of the suit.

C.O 687 of 2021 is disposed of with the above terms. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)