

09.12.2021
(S/L-34)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 2331 of 2019

Sri Ashok Kumar Samanta & Ors.

-Vs-

Sri Kishore Kuilya & Ors.

Mr. Samir Kumar Dutta,

Mr. G. Patra,

Mr. Subrata Mukherjee,

..... For the Petitioners.

Sk. Aptabuddin

..... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for recovery of possession on the expiry of the period of lease and is directed against order Nos. 147 & 148 passed by the First Court of learned civil Judge (Junior Division) Tamluk, Purba Medinipur, in J. Misc. Case no. 3314 of 2017 arising out of the said suit being Title Suit No. 127 of 2004.

The plaintiff no. 4 died during the pendency of the suit.

The heirs and legal representatives of the said deceased/plaintiff were not brought on record within the stipulated period of time.

The learned Trial Judge by the orders impugned has allowed an application filed by the plaintiffs under Order XXII Rule 9 of the Code of Civil Procedure subject to payment of costs of Rs. 2000.00 (Rupees two thousand only) thereby setting aside the

abatement so far as it relates to deceased plaintiff no. 4.

Learned Counsel for the petitioner submits that the plaintiffs are absolutely negligent in substituting the heirs and legal representatives of the deceased plaintiff no. 4 in the suit inasmuch as the said plaintiff died on September 09, 2015 whereas the application under Order XXII Rule 9 of the Code was filed on December 07, 2017 and the plaintiffs with such conduct do not deserve for an order of setting aside abatement and to buttress his said argument he relies on following two decisions of the learned Single Benches of this Court:-

Sk. Motibar Rahaman & Ors. vs. Sk. Md. Hafizuddin & Anr. reported in **2019(1) Indian Civil Cases 126 (Cal)** and the case of ***Ashok Finance Corporation vs. Sardar Bhag Sing & Ors.*** reported in **AIR 1978 Cal 516**.

His further submission is that the orders impugned are self-contradictory inasmuch as the learned Trial Judge even after holding that there is no necessity to implead heirs of plaintiff no. 4 is allowing an application under Order XXII Rule 9 of the Code.

Learned Counsel for the opposite parties on the other hand submits that the suit being a suit for recovery of possession, on the expiry of the period of lease shall not abate for the failure of the surviving plaintiffs to bring the heirs and the legal representatives of the deceased plaintiff no. 4 on record, however, by way of abundant precaution, the application under Order XXII Rule 9 of the Code was

filed and the learned Trial Judge, for the interest of justice, has allowed the same.

Having heard the learned Counsel for the parties and on perusal of the materials on record, it appears that the suit is a suit simpliciter for recovery of possession on determination of lease by efflux of time. The lessors have jointly filed the said suit. A suit of such nature would not abate as a whole due to non-substitution of the heirs and legal representatives of one of the deceased plaintiffs, as rightly submitted by the learned counsel for the plaintiffs/opposite parties.

In the facts and circumstances of the present case, the decisions cited by the learned counsel for the petitioner are misplaced.

The learned Trial Judge has rightly exercised his discretion in condoning the delay to file the application under Order XXII Rule 9 of the Code.

This Court does not find any reason to interfere with the orders impugned.

C.O. 2331 of 2021 is dismissed without any 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.)