

S/L 7
09.04.2021
Court. No. 19
GB

C.O. 4191 of 2019

Smt. Anjali Das (Sima)
Vs.
Smt. Sandhya Achariya & Ors.

(Through Video Conference)

*Mr. Kallol Kr. Basu,
Mr. Prasanta Bishal.*

...for the Petitioner.

*Mr. Aneek Pandit,
Mr. Pinaki Brata Ghosh,
Mr. Arindam Paul,
Ms. Sonakshi Mitra,
Ms. Sushmita Mazumder.*

...for the Opposite Party Nos.2 & 3.

On the last occasion none appeared on behalf of the opposite parties despite service. This Court directed the petitioner to serve a fresh notice upon the opposite parties. Today, affidavit-of-service has been filed showing personal service upon one of the learned advocates and by registered post upon the opposite parties as also the other learned advocate. Delivery report has been annexed to the affidavit-of-service.

Learned advocate for the opposite party nos.2 and 3 are represented. As the opposite party no.1 had not appeared on two occasions, the matter is being taken up in her absence.

The revisional application arises out of an order dated September 6, 2019 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat in Title Suit No.83 of 2012.

By the order impugned the learned court below rejected an application for substitution of the heirs and legal representatives of the defendant no.2, who died on April 7, 2017. The said application was filed on January 18, 2018 after the lapse of the statutory period. Accordingly, the learned court found that the suit had already abated and the application was dismissed and the suit was also dismissed as abated. Instead of dismissal of the suit liberty to file an appropriate application ought to have been given.

It is submitted that the other three defendants were on record and the said defendants would continue and the suit would not abate as a whole. The learned court below came to the finding that in a suit for specific performance of contract the right to sue would not survive against any of the defendants as the claim for specific performance was jointly against the defendants who had jointly entered into the agreement with the plaintiff.

However, this Court finds that the petitioner should take steps in the Court below for setting aside abatement. Liberty is given to substitute the heirs of the defendant no.2 in the proper form by filing a composite and proper application for substitution upon setting aside abatement upon condonation of delay in terms of Order XXII Rule 9 of the Code of Civil Procedure. In case of the other three defendants, who are surviving and are on record, no separate application is required to be filed. Once the abatement is set aside the suit will be regularised. The learned court is

directed to allow the application for substitution to be filed by the petitioner, upon condonation of delay and upon setting aside abatement. The heirs and legal representatives of the deceased shall be entitled to contest the suit.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)