

22.06.2022

WPLRT 27 of 2022

Court : 04
Item : PB-34
Matter : WPLRT
Status : DISMISSED
Transcriber: nandy

Sulov Kumar Ghosh & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Suprohat Bhattacharya, Advocate
.....for the Petitioners
Mr. T.M. Siddiqui, Advocate
Mr. Ayan Banerjee, Advocate
Mr. Nilotpall Chatterjee, Advocate
.....for the State

The writ-petitioner was pursuing a remedy before the Tribunal challenging the action of the authority in bringing the change in the record of rights on the basis of inheritance and subsequent divestation of right, title and interest. The gamut of the dispute involved in the instant writ-petition appears to us is inseparable and unsegregable amongst the respondents and, therefore, presence of all the respondents are necessary for the purpose of deciding the cause.

One of the respondents i.e. Sujit Ghosh died in the year 2010. An application was taken out in the year 2014 for addition by way of substitution of the heirs and legal representatives of the said deceased respondent. The Tribunal after noticing the fact disclosed in the said application that the said respondent died in the year 2010 and the averments made in the said application as well as the prayer made therein, was of the opinion that it does not remotely suggest that the substitution was sought for setting aside the abatement and proceeded to

dismiss the said application. On a next day, when the matter was listed, since the proceeding had abated, the Tribunal dismissed the said tribunal application.

It is submitted before us that the said application was filed primarily for addition and not for substitution and, therefore, the Tribunal was wrong in passing the order dated March 11, 2021.

We are surprised with the aforesaid submission for the simple reason that once a party died during the proceeding, in order to avoid the consequence of abatement, the device cannot be resorted to under the provision of Order I Rule 10 of the Code of Civil Procedure seeking addition. The substitution of heirs and legal representatives are required to be made as the right to sue survives upon them. The moment the period for filing an application for substitution is expired, the consequence is abatement which is automatic. However, the abatement would depend upon the nature of the claim and the cause of action pleaded therein. It is not a rigid rule that upon the death of the defendant/respondent the proceeding would be abated against him/her but it depends upon the nature of claim and the cause of action and whether the claim can be separated and adjudicated with the surviving defendants/respondents.

As indicated above, the nature of the claim is inseparable and cannot be segregated amongst the respondents and, therefore, the death of one of the respondents would attract abatement in its entirety.

Though the language has not been used in the order dated September 1, 2021 that the dismissal is by virtue of abatement, but the tenet of the order suggests the same and, therefore, we do not find any infirmity and/or illegality in the order.

The writ-petition being **WPLRT 27 of 2022** is **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)