

18.04.2022
Item No.17
Ct. No.7
CHC
(disposed of)

**C.O.825 of 2022
(Physical Hearing)**

**Shri Debabrata Ghosh
Vs.
Smt Jyotshna Ghosh since deceased rep. By Sri
Subhrojyoti Ghosh**

Mr. Amitabha Ghosh,
Ms. Nabanita Chatterjee,
Sk. Sujauddin
...for the petitioner

Learned advocate appearing for the petitioner submits that a suit having already abated as against deceased plaintiff, the filing of an application under Order 1 Rule 10(2) C.P.C. read with Section 151 C.P.C. is not according to law, as it would offend the provisions available under Order 22 Rule 9 C.P.C.

It is contended by the learned advocate for the petitioner that the sole plaintiff died in the year 2005, and as such, no steps having been taken, the suit already got abated.

The instant petition seeking for addition of the party has been made making infraction of the provisions of the law, learned advocate for the petitioner argues.

Upon perusal of the impugned order, it appears that there has been no conscious decision rendered by the court below pertaining to the application under

Order 1 Rule 10(2) C.P.C. filed by the intending added parties. By the order impugned dated 14th March, 2022, it appears that the application has been posted for hearing on 9th June, 2022.

That being the position, no interference is called for in this case as no express decision has been returned so as to claim any prejudice in this case.

This would not prevent the court below to hear out the pending application under Order 1 Rule 10(2) CPC read with Section 151 C.P.C. either on the date scheduled for the purpose, or if for any reason whatsoever, the same could not be done, the application may be disposed of within three weeks thereafter, peremptorily providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

With this direction and observation, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)