

16.06.2022
Item No.1
Ct. No.7
CHC
(disposed of)

C.O. 1208 of 2022

**Farida Begam & ors.
Vs.
Sarina Yasmin**

Mr. Ali Imam Shah
...for the petitioners

Mr. Arup Krishna Das,
Mr. Abdus Salam,
Mr. Wasim Ahamed
...for the opposite party

The subject-matter of challenge in this revisional application is against the order dated 4th March, 2022, passed by learned District Delegate, Burdwan, in Succession Certificate Case No.01 of 2016, declining to grant stay, and thereby fixing date for evidence.

Mr. Shah, learned advocate appearing for the petitioners submits that petitioners being claimants instituted a claim case for the sudden death of one Saddam Hossain, who died on 2nd January, 2015 having met with road traffic accident.

Learned advocate for the petitioners submits that Saddam Hossain at the time of accident was an employee of Eastern Railway and, he died bachelor. The opposite party suddenly lodged F.I.R. against Saddam Hossain, and some of the petitioners under Sections 420/376/493/506 I.P.C.

The opposite party then sought to be added in the claim case upon filing an application under Order 1 Rule 10 C.P.C. The prayer for addition was rejected by the court below. It was challenged in revisional application being C.O.3998 of 2016. Ultimately, referred revisional application was disposed of by this Court permitting the opposite party to be added under Order 1 Rule 10 C.P.C. in the claim case before the Tribunal.

In view of the observation of learned Judge passed in C.O.3998 of 2016, as to whether a person was the spouse of the deceased or not, such determination of the marital status may be best adjudicated upon obtaining a declaration from civil court. The petitioners then proceeded to file a Title Suit No.264 of 2017 so that opposite party, namely, Sarena Yasmin could not claim any matrimonial relationship with the deceased Saddam Hossain, and the marriage certificate produced by Sarena Yasmin could be declared as inoperative, void and ab initio. That civil suit is pending.

Learned advocate appearing for the petitioners upon referring such facts, submits that in the referred Succession Certificate Case, the court below by the order dated 14th June, 2018, was pleased to grant stay for a period of six months observing therein that the

pending Succession Case has a deep connection with the fate of Title Suit No.264 of 2017, which will determine the marital status of opposite party so as to claim any marital relationship with deceased Saddam Hossain.

Upon referring such order, learned advocate for the petitioners submits that the court below declined to grant any stay being oblivious of own observation, made on 14th June, 2018.

It is thus contended that in the event of the Succession Certificate Case being proceeded ahead, there will be serious prejudice caused to the petitioners, and the Succession Case should not be proceeded further pending adjudication of the civil suit.

Per contra, Mr. Arup Krishna Das, learned advocate appearing for the opposite party submits that in the absence of any stay order being produced by the opposite party, while claiming stay, the court below has rightly rejected the prayer for stay, and fixed date for evidence in order to ensure expeditious disposal of Succession Certificate Case.

It is further submitted by learned advocate appearing for the opposite party that there will be inordinate delay caused in the disposal of the

Succession Certificate Case, unless the pending civil suit reaches its logical conclusion expeditiously.

While making elaboration of such issue, it is proposed by the learned advocate for the opposite party that both the Succession Certificate Case and the pending civil suit may be tried analogously, otherwise there will be inordinate delay in the disposal of Succession Certificate Case.

As regards the proposed prayer for analogous trial of the two cases mentioned hereinabove, the same is not addressed by this Court in the instant case, and the opposite party is given liberty to take recourse to the provisions of law for his desired relief before the appropriate authority.

Since, the prayer for extension of stay has been rejected by the court below, by the order impugned being oblivious of its own order dated 14th June, 2018, the impugned order, as such, is not sustainable.

Accordingly, the same is set aside with a direction upon the court below that the District Delegate, Burdwan in Succession Certificate Case No.01 of 2016 will hear out the petition praying for extension of stay afresh, within a fortnight from the date of communication of this order, in context with its own observation made in order dated 14th June, 2018, 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 observation/direction, 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.)