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Ct. 18
08.07.2022

C.O. No. 1340 of 2022

**Sri Abhishek Singh
Vs.
Iftekhar Alam & Ors.**

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Mr. Kaustav Bhattacharya ... For the petitioner.

Mr. Ayan Banerjee,
Ms. Debjani Sengupta ... For the O.P. No. 1.

The defendant no. 2 in a suit for declaration being Title Suit No. 1437 of 2015 pending before the 4th Court of learned Civil Judge (Junior Division), Howrah is the petitioner of the present application under Article 227 of the Constitution of India.

The defendant no. 4 died during the pendency of the said suit. The plaintiff filed an application for a direction upon the surviving defendants to supply the details of the heirs of the said deceased defendant to the plaintiff.

The learned Trial Judge by the impugned Order No. 42 dated December 17, 2021 allowed the said application thereby directed the surviving defendants to supply the details of the heirs and legal representatives of the said deceased defendant to the plaintiff.

The defendant no. 2 filed an application praying exemption from complying with the said direction. The learned Trial Judge by the Order No. 46 dated

February 25, 2022 has dismissed the said application.

The defendant no. 2 thereafter filed application under Order VI Rule 17 of the Code of Civil Procedure for amendment of his written statement and the plaint of counter-claim to incorporate the fact that the defendant no.3 and the defendant no. 4 before his death had retired from the partnership of the defendant no. 1 firm, as a result, it has become a proprietorship firm of the defendant no. 2 alone.

The learned Trial Judge by the order No. 52 dated May 11, 2022 although allowed the said application but in the concluding portion of the said order has again directed the defendant no. 2 to comply with the aforesaid direction with the observation that in default, the defence of the defendant no. 2 in the suit shall be struck out.

The said Order No. 42 dated December 17, 2021, Order No. 46 dated February 25, 2022 and the said part of the order No. 52 dated May 11, 2022 are under challenge in the present revisional application.

The direction to supply the particulars of the heirs and legal representatives of the deceased defendant no. 4 to the plaintiff is erroneous for two-fold reasons; firstly, except reporting the death of the defendant no. 4 to the Court through their learned advocate as contemplated under Order XXII Rule 10A of the Code of Civil Procedure, no other obligation accrues to the defendants upon the death of the said defendant,

secondly, after the application for amendment of the written statement being allowed, the defendant no. 1 company has become a proprietorship firm of the defendant no. 2, in consequence, the direction to provide details of the heirs of the deceased defendant no. 4 to the plaintiff has become infructuous.

The orders impugned, for the aforesaid reasons, are set aside. C.O. 1340 of 2022 is allowed with the above terms without any order as to costs.

The learned Trial Judge is requested to expedite the disposal of the suit.

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.)