

10.03.2022
Ct. 21
D/L 42
ab

C.O. 1238 of 2021
(Via Video Conference)

Phanindra Narayan Chowdhury & Ors.
-Vs-
Chandan Singha

Mr. Biswajit Tiwari,

... for the petitioners

Mr. Biswajit Tiwari, learned advocate appears for the petitioners.

The petitioners/plaintiffs/respondents, being aggrieved by the order of allowing the application for substitution not from the date of death but from the date of knowledge, by the Additional District Judge, 1st Court, Malda on 08.04.2021 in connection with Title Appeal No. 33 of 2010, have preferred the present application.

Perused the order impugned. It appears therefrom that respondent No. 2 Rabindra Narayan Chowdhury died on 08.02.2016 but in paragraph 3 of the impugned order, it has been typed that the respondent No. 2 died on 08.01.2016 and in paragraph 4 of the said order, it has been written that Rabindra Narayan Chowdhury died on 08.10.2016. The respondents informed about the death of the Rabindra Narayan Chowdhury to the

appellant on 19.02.2016. The appellant appears to have filed the application for substitution on 28.04.2016 and the application under Section 5 of the Limitation Act on 22.02.2017.

This Court is totally under confusion when actually Rabindra Narayan Chowdhury died either on 08.02.2016 or 08.01.2016 or 08.10.2016. A question arises in the mind of this Court, if the substitution application was filed on 28.04.2016 then what was the need for filing the application under Section 5 of the Limitation Act on 22.02.2017.

In view of the provisions of Order 22 Rule 4 of the Code of Civil Procedure, in case of death of a party, the substitution application has to be filed within 90 days and on failure, the suit automatically stands abated in case right to sue does not survive. In case suit stands abated in view of the provisions of order 22 Rule 9 of the Code of Civil Procedure, an application has to be made within 60 days for setting aside the abatement. In case such application is not filed within 60 days, then an application for condonation of delay under Section 5 of the Limitation Act has to be filed.

If I am to believe that Rabindra Narayan Chowdhury died either on 08.02.2016 and if the substitution application was filed on 28.04.2016 then the substitution application appears to be within time and the question of abatement or the question of filing

application for condonation of delay under Section 5 of the Limitation Act does not arise. In that case, how the learned Court below could calculate 90 days from the date of knowledge of the defendant/appellant/opposite party, the substitution petition was filed.

Thus, this Court is of the view that the order impugned suffers from infirmity and the same is liable to be set aside.

The learned Court below is directed to rehear the matter after taking into consideration the provisions under Order 22 Rule 4 and Order 22 Rule 9 of the Code of Civil Procedure along with the Articles 120 and 121 of the Schedule of the Limitation Act, 1963.

With the above observations, the revisional application being C.O. 1238 of 2021 is disposed of.

Interim order, if any, stands discharged.

Connected application, if any, also stands disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(**Kesang Doma Bhutia, J.**)

