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C.O. 1521 of 2022

**Karabi Datta
Vs
Bhaswati Banerjee & Ors.**

Mr. Samir Kumar Dhar,
Mr. Chitapraya Ghosh,
Mr. Komal Singh, ... For the petitioner.

Mr. Amitavha Ghosh,
Ms. Nabanita Chatterjee.

Petitioner has challenged four orders being orders No. 95 to 98 commencing from 30th May, 2022 onwards up to 19th July, 2022 passed by learned Additional District Judge, 1st Fast Track Court, Hooghly Sadar in Probate Suit No. 26 of 2003.

Mr. Samir Kumar Dhar, learned advocate being assisted by Mr. Chitapraya Ghosh, learned advocate appearing for the petitioner submits that substitution application was allowed ignoring the delay of 3838 days in filing the substitution application, even in the absence of any explanation of delay being offered by the opposite parties in the substitution application, upon exercising inherent power available under Section 151 of the C.P.C..

Learned advocate appearing for the petitioner further submits that the application for substitution has been allowed simply upon consideration of institutional laches for the relevant case record

having been not traced out for a considerable period of time.

The allow of substitution application belatedly with a delay of 3838 days would give rise to an issue whether the office of the executor is heritable one or not, and without adhering addressing such issue, the court below has allowed the prayer for substitution application belatedly taking care of the institutional mistake, learned advocate for the petitioner argues.

Per contra, learned advocate appearing for the opposite parties submits that the original case record, was missing for considerable period of time, and for which as per direction of this court passed in writ jurisdiction, the case record could be traced on 26th April, 2022. It is due to such non-availability of the case record, the petition for substitution could not be submitted earlier, and upon consideration of such institutional laches, the court below proceeded to exercise its inherent power under Section 151 of the C.P.C. to allow the prayer for substitution.

It is also submitted that there is no impediment to exercise the power under Section 151 of the C.P.C. Suo Motu by the court below in an appropriate case being made out.

Learned advocate for the petitioner in reply to the submission of the opposite parties, submits that the delay being admitted by the opposite parties,

substitution application ought not to have been allowed in the absence of any explanation being offered.

Having considered the submission of both sides, it appears that the substitution application allowed belatedly is only under dispute in this case.

Admittedly the record could not be traced out for some considerable period of time. The case record, however, could be found out on 26th July, 2022, because of the intervention of the order passed in writ jurisdiction of this court.

Since institutional mistake or laches were taken care of, and that was given precedence to the technicalities, though the delay was admitted by the opposite parties proposing substitution, but there is no wrong in the impugned order, for the substitution being allowed belatedly subscribing independent reasons therefor.

Since substitution application has been allowed belatedly for the alleged absence of any explanation being offered in the relevant application for substitution, resulting in consequent harassment caused to the petitioner, that needs to be taken care of, upon saddling some costs against the opposite parties.

The revisional application is disposed of directing the opposite parties to pay cost of Rs.

10,000/- (Ten thousand) to the petitioner within one week from the date of communication of this order to the petitioner in the court below.

With this, the impugned order stands modified to the extent made hereinabove.

The issue raised by the petitioner, that the office of the executor is a heritable one or not needs to be addressed by the court below at the time of final hearing of this case, which must be decided giving an opportunity of hearing to both the parties.

To decide such issue as raised by the petitioner, both the parties are at liberty to adduce their respective evidence, and the issue may be decided in context with the evidence to be adduced by the parties to this case.

Petitioner is directed to make communication of this order to the learned court.

Nothing would prevent the petitioner to file additional written statement or better particular of written statement in context with the issue raised in this case.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)