

(05)  
30.08.2022  
(p.jana)

**IN THE HIGH COURT AT CALCUTTA**  
**CIVIL REVISIONAL JURISDICTION**

**CO No. 3717 of 2019**

**Steel Authority of India Ltd.**

**-versus-**

**Smt. Ratna Mukherjee & ors.**

Mr. Kallol Basu,  
Mr. Nilanjan Pal, ... for the petitioner.

Affidavits of service filed on behalf of the petitioner be kept with the record.

None appears on behalf of the opposite parties in spite of service.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration of title and permanent injunction.

In the suit, the prayer of the petitioner for an ad interim order of injunction was refused, aggrieved thereby, the petitioner has preferred an appeal being Misc. Appeal No. 36 of 2014(03 of 2014).

The order no. 31 dated July 14, 2017 and order no. 42 dated January 04, 2019 passed in the said appeal by the 2<sup>nd</sup> Court of learned Civil Judge (Senior Division) at Asansol, District: Paschim Burdwan are under challenge in the present application under Article 227 of the Constitution of India.

The petitioner, on being aware that the respondent no. 5 has died, took out an application for substitution of her heirs and legal representatives in the said appeal.

The Appeal Court below by the order no. 31 dated July 14, 2017 has dismissed the said application and by the order no. 42 dated January 04, 2019 has refused to recall and/or modify its earlier order.

The learned advocate for the contesting defendants/respondents in course of hearing of the application for substitution submitted that the respondent no. 5 died prior to institution of the suit, the appeal Court below, inspired by the said submission dismissed the application for substitution holding that when the respondent no.5 has died prior to filing of the suit, there is no question of survival of right to sue as such, Order XXII of the Code of Civil Procedure has no manner of application. The appeal Court below by the said order, directed expunging the name of the said deceased respondent from the cause title of the memorandum of the said appeal and by the order no. 42 dated January 04, 2019 has dismissed the petitioner's application for recalling of the said earlier on the ground that the Court cannot reconsider or modify its own order.

There is nothing on record, except the said submission of the said learned advocate of the contesting respondents to suggest that the respondent no. 5 has died prior to institution of the suit.

It appears from the record that the deceased respondent no. 5 was the sister of defendant/respondent no. 3 and 4, as such, the learned advocate who is representing the said respondents in the appeal, is apparently in a position

to supply the date of death of the respondent no. 5, his obligation to report such death to the Court may come under Order XXII Rule 10A of the Code.

The said aspect of the matter should have been taken into consideration while deciding the said application for substitution inasmuch as the date of death of the said respondent no. 5 was required to be ascertained before holding that the suit was filed against a dead person but such drill since has not been made, the said application for substitution demands fresh consideration, as such, the order no. 31 dated July 14, 2017 is set aside, in consequence, challenge to the order no. 42 dated January 04, 2019 has become infructuous.

The Appeal Court below is requested to reconsider the application for substitution of the heirs and legal representatives of the deceased respondent no. 5 in the appeal afresh in accordance with law, as expeditiously as possible, preferably within a period of four weeks from the date of communication of this order and in doing so, shall not grant unnecessary adjournment to either of the parties.

CO 3717 of 2019 is allowed with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the party subject to compliance of all requisite formalities.

**(Biswajit Basu, J.)**