

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.18 Of 2022
(Through video conferencing mode)

Dr. Raj Gopal Ray and another ... ***Petitioners***

Mr. A. Routray, Advocate

-versus-

Rajkishore Sahoo ... ***Opposite Party***

CORAM: JUSTICE ARINDAM SINHA

ORDER
24.01.2022

Order No.

- 01.** **1.** Mr. Routray, learned advocate appears on behalf of petitioner and submits his client is plaintiff. By order dated 9th March, 2017, defendant no.2 was precluded to file written statement. Said defendant thereafter made application on 8th April, 2019 praying for leave to file written statement. The application remains pending. In the circumstances, his client applied for substituting the legal representative of said defendant, who had died in the meantime. By impugned order dated 22nd December, 2021, the learned judge rejected the application. Being aggrieved his client has moved before this Court.
- 2.** On query from Court Mr. Routray refers to paragraph 12 in the writ petition where order dated 9th March, 2017 has been quoted and same is reproduced below:-

“ 09.03.2017 – Advocate for the plaintiff, D-1 files hazira, no W.S. by defendant No.2 no steps taken from the side of D.2 as the statutory period for filing of W.S. is over. He is precluded to file W.S. put up on 30.03.2017 for settlement of issue.”

3. Impugned order says as follows:-

“This order arises out of the petition filed on 15.12.2021 wherein the plaintiff prays to substitute the legal representatives of D-2. Perused the petitions along with the record. Hearing is closed and the case was posted for argument. Defendant no.2 is precluded to file WS vide order dtd. 09.03.2017. Hence at this stage, the substitution against D-2 is not necessary, as he did not show any interest to contest with the suit. So, the petitions filed on 15.12.2021 devoids merit stands rejected.

Put up on 03.01.2022 for argument.”

It is clear that provision in sub-rule (4) in rule 4 under order XXII, Code of Civil Procedure was applied by the learned judge in making impugned order. Nevertheless, petitioner is aggrieved and wants to bring on record the legal representative of deceased defendant no.2.

4. Order XXII rule 4 (4) clearly exempts plaintiff from necessity of substituting legal representatives of any defendant who has, inter alia, failed to file written statement. Deceased defendant no.2 had failed to file written statement as per said order dated 9th March, 2017.

In the circumstances, impugned order is a good order but plaintiff wants to substitute the legal representative.

5. Impugned order is set aside at instance of plaintiff. The learned Court below is directed to cause substitution by incorporating name and address of the legal representative of deceased defendant no.2, as given in the schedule to the substitution application. Said Court will thereupon proceed with the suit pursuant to notice given to substituted defendant.

6. Since the order has been made at instance of plaintiff, Court did not require issuance of notice.

7. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant

