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

C.O. 79 of 2022

Abdul Rahim Molla & ors.

versus

Mst. Harichhennchha Bibi & ors.

Mr. Arnab Roy
Mr. Satyam Mukherjee
Ms. Sayani Ahmed
Mr. Soumyadeep Mukherjee
Ms. Ishita Kundu
Ms. Debamita Mukherjee
... For the petitioner

Mr. Mahamudul Hasan
... for the opposite party nos.1 to 6

This revisional application has been filed by plaintiffs-petitioners under Article 227 of the Constitution of India challenging order No.58 dated 23rd April, 2021 passed by the learned Civil Judge (Junior Division), 1st Court, Basirhat, 24-Parganas (North) in Title Suit No.240 of 2014 rejecting the prayer of the plaintiffs-petitioners for substituting legal heirs of deceased plaintiff no.1 Mojit Molla under Order XXII Rule 3 of the Civil Procedure Code.

The brief fact of the case is that the plaintiffs-petitioners filed a suit for declaration and permanent injunction in respect of the suit property against the opposite parties being Title Suit No.240 of 2014. During pendency of the suit, the plaintiff no.1, Mojit Molla

expired on 10th May, 2020. The plaintiffs-petitioners filed an application on 8th January, 2021 under Order XXII Rule 3 of the Civil Procedure Code for substituting the legal heirs of deceased plaintiff no.1, Mojit Molla. The said application for substitution was rejected by the learned Trial Court on the ground that it has been filed after the expiry of statutory period prescribed for substitution and the suit has already been abated in respect of deceased-plaintiff no.1, Mojit Molla.

Being aggrieved by and dissatisfied with the impugned order passed by the learned Trial Court, the plaintiffs-petitioners have filed the present revisional application.

Mr. Arnab Roy, learned Advocate for the plaintiffs-petitioners submits that the plaintiff no.1 Mojit Molla expired on 10th May, 2020 during the Covid-19 Pandemic and for such reasons the application could not be filed within the statutory period. However, as per the order passed by the Hon'ble Supreme Court in *Suo motu Writ (Civil) No.3 of 2020* the period of limitation stood extended for a period of 90 days from 15.3.2021 in cases where the limitation would have expired between the period 15.3.2020 till 14.3.2021. He further indicates that by dint of such order the period from 15.3.2020 till 14.3.2021 was excluded in computing the period of limitation. In the aforesaid backdrop, he submits for

setting aside the impugned order passed by the learned Trial Judge and legal heirs of deceased plaintiff no.1 be substituted in his place.

In reply to the contentions raised on behalf of the plaintiffs-petitioners, Mr. Mahamudul Hasan, learned Advocate for the opposite parties-defendants submits that after the expiry of the statutory period the suit has automatically abated so far as deceased plaintiff no.1 is concerned and therefore the plaintiffs ought to have filed an application for setting aside abatement under Order XXII Rule 9 of the Code along with an application under Section 5 of the Limitation Act for condonation of delay which is the appropriate recourse in the circumstances of the case. However, since the plaintiffs-petitioners did not take such recourse before the learned Trial Court and chose to file an application under Order XXII Rule 3 of the Code in the suit where the suit has already abated in respect of the deceased plaintiff no.1, the learned trial Court was justified in rejecting such application for substitution. In view of his aforesaid submissions, he prays that the revisional application be dismissed. In support of his contention, he relies on catena of decisions in the cases of (i) *Tripper Chand Dhanpat Vs. Matu Ram & ors.*, reported in A.I.R. 1970 Punjab & Haryana 273; (ii) *M/s. Rashtriya Yuva Udhog Vs. Smt. Dheeraj Kanwar*, reported in A.I.R. 2000 Rajasthan 353

and (iii) *Mst. Bibi Rahmani Khatoon & ors. versus Harkoo Gope & ors.*, reported in A.I.R. 1981 S.C. 1450.

The materials on record shows that the plaintiff no.1 Mojib Molla expired on 10th May, 2020 and the application for substituting the legal heirs of said deceased plaintiff was filed on 8th January, 2021. Thus it is not in dispute that the plaintiff no.1 expired during Covid-19 Pandemic. Bearing in mind the difficulties that may be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed, during the Covid-19 pandemic, the Hon'ble Supreme Court in *Suo motu Writ (Civil) No.3 of 2020* issued following directions which are reproduced hereunder:

"2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996. Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings,

outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

From the aforesaid directions, it manifest that in cases where the limitation would have expired between the period from 15.03.2020 till 14.03.2021 all persons shall have a limitation period of 90 days from 15.03.2021. Further the period from 15.03.2020 till 14.03.2021 also stood excluded while computing the period of limitation. It is relevant to note that the plaintiff no.1 expired on 10th May, 2020, which falls within such period between 15.03.2020 till 14.03.2021, and the application for substitution filed on 8th January, 2021, which also falls within such period. Thus, the application for substitution of legal heirs of deceased plaintiff no.1, is covered by the period noted in the order of Hon’ble Court. Although it has been strenuously argued on behalf of the opposite parties-defendants that the suit has abated, however, in view of the directions issued by the Hon’ble Supreme Court since the period of limitation stood extended by such order of Hon’ble Court passed during Covid-19 Pandemic the question of abatement does not arise. Accordingly, the argument advanced in this regard by the learned Advocate for the defendants-opposite parties does not hold good.

The decisions cited on behalf of opposite parties-defendants are not applicable since those are distinguishable in facts.

Thus, the impugned order of the learned Trial Court rejecting the prayer for substitution of legal heirs of deceased plaintiff no.1 Mojit Molla is set aside. Order of abatement, if any, also stands vacated.

Let the legal heirs of plaintiff no.1 (since deceased), arraigned in the application for substitution being plaintiff nos.1(a) to 1(f), be substituted in his place.

With the aforesaid observations, the Civil Revisional application being **C.O. 79 of 2022** stands allowed and disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)