

119 **21.09.**
2023
Ct. No. 652

Ab

CO 849 of 2019
IA No. CAN 1 of 2019 (Old No. CAN 4872 of 2019)
IA No. CAN 3 of 2019 (Old No. CAN 12200 of 2019)

Arup Nath Bhattacharyya
Vs.
Durga Sankar Mullick and others.

Ms. Munmun Ganguly,,
Ms. Sayani Das,
Ms. Rimpa Das.

... for the petitioner.

Mr. T. N. Paul,
Mr. Somnath Gangopadhyay.

... for the opposite parties.

This is an application under Article 227 of the Constitution of India against order no. 81 dated 29th January 2019 by the learned Judge, 13th Bench, City Civil Court at Calcutta.

It is contended that the opposite parties herein as plaintiffs filed the aforesaid suit seeking a declaration that the plaintiffs are in possession of the portion of room no. 59 described in Schedule A and B to the plaint under irrevocable licence and also prayed for permanent injunction restraining the defendants from taking forceful possession and also for other reliefs.

During pendency of the suit, out of three plaintiffs, plaintiff no. 3, Girija Ranjan Saha, died on 2nd December 2018. After the death of the said plaintiff no. 3, the other plaintiffs filed two similar applications contending that said Girija Ranjan Saha died leaving behind heirs mentioned in paragraph 2 of the application. The said applications seeking substitution of the legal heirs of deceased plaintiff no. 3 were taken up for hearing on 29th January 2019 by the Court below.

It appears from the order impugned that the defendant no. 1/petitioner appeared during hearing and

sought for an adjournment to file written objection contenting that the plaintiffs have described themselves as licensee and right to stay as licence is non-heritable, so the substitution of legal heirs in place of deceased plaintiff no.3 may not lie.

However, the Court below refused to give them any opportunity to file written objection and disposed of the said application on the sole consideration that the application for substitution is within the statutory period.

Being aggrieved by that order, learned Counsel appearing on behalf of the petitioner submits that he could not file written statement as yet nor he was given an opportunity to file written objection against the said application and the Court below violating the principles of natural justice has erred in law in allowing the said application for substitution and, accordingly, she has prayed for setting aside the order impugned.

Learned Counsel on behalf of the opposite parties submits that the petitioner herein as defendant no. 1 was represented during hearing of the application and got opportunity to place his grievances and the Court below was justified in passing the order impugned after considering materials on record, which does not call for interference by this Court.

Having considered the facts and circumstances of the case, it appears that the defendants in the said suit could not disclose the defence nor they got the opportunity to file their written objection before the issue was taken up for hearing by the Court below. The principles of natural justice demands that no person should be condemned unheard.

In such view of the matter, the order dated 29th January 2019 is hereby set aside. CO 849 of 2019 is accordingly disposed of by giving liberty to the contesting defendant no. 1/petitioner to file written objection against plaintiffs/respondents application for substitution within a period of three weeks from the date of communication of

this order. In the event of filing such written objection by the defendant no. 1/petitioner herein, the Court below will hear the applications for substitution afresh and to pass fresh order within a period of three weeks thereafter.

In view of the disposal of the revisional application, the connected applications have become infructuous and the same are also disposed of.

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

(Ajoy Kumar Mukherjee, J.)