

08.06.2023
Court No. 19
Item no.16
CP

C.O. 1687 of 2023

Smt. Gitika Banerjee & anr.
Vs.
Soma Sarkar

Mr. Subir Banerjee
Md. Hossain
Mr. Asis Dutta
Ms. G. Gope

.....for the petitioners.

The revisional application is at the instance of the defendants in a suit for ejectment under the West Bengal Premises Tenancy Act. The suit is at the stage of cross examination. The defendant no. 3 died during the pendency of the suit. The plaintiff filed an application under Order 22 Rule 4(4) of the Code of Civil Procedure for exemption from substituting the heirs of the deceased defendant no. 3. The court upon considering the records was of the opinion that as the defendant no. 3 did not ever contest the suit or file any written statement, the provision of Order 22 Rule 4(4) of the Code of Civil Procedure would be applicable and the heirs of the defendant no. 3 need not be substituted.

Learned advocate for the petitioners submit that the other defendants have a right to contest the suit. The heirs and legal representatives of the deceased defendant no. 3 would suffer if the suit is

decreed in their absence and they would be completely non-suited.

In the opinion of this court, as the learned trial court has categorically found from the records that despite service of summons upon the defendant no. 3, the said defendant did not contest the suit, the heirs are not required to be substituted.

The defendants claim to have a common predecessor-in-interest and a common defence. The heirs of the deceased defendant are the grand children of the original tenant (since deceased). This is a suit for eviction under the West Bengal Premises Tenancy Act, 1997.

The defendants are agitating the cause of the heirs of the deceased defendant no. 3, who have not shown any interest to challenge the order impugned. If the said heirs have any interest in the suit they may always approach the learned trial court.

Hence, there is no scope for entertaining the revisional application. The same is dismissed.

The suit shall proceed in accordance with law.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)