

Item No. 6
11.12.2023
Court. No. 19
GB

C.O. 2338 of 2022

Momtaz Begum
Vs.
Sk. Jamshed Ali & Ors.

*Mr. Tapan Coomaar Dey,
Mr. Subrata Bhattacharjee,
Ms. Shreya Chatterjee*

...for the Petitioner.

*Mr. Rwitendra Banerjee,
Mr. Sourav Basu,
Mr. Subhasis Chatterjee,
Mr. A.R. Chowdhury*

...for the Opposite Party No.1.

Affidavit-of-service filed in Court today, be kept with the record. Despite service, none appears on behalf of the opposite parties except opposite party no.1.

The revisional application is entertained, although a part of the order, technically speaking, is an appealable order. The ground for entertaining the revisional application is irregular and erroneous exercise of jurisdiction by the learned court below on a total misconception of law. The application for substitution filed by the petitioner was rejected on the ground that there was no provision under the law to allow substitution upon setting aside abatement upon condonation of delay. Such observation needs modification.

However, it appears that the petitioner has already been added as a defendant in the suit, at the instance of the opposite party no.1. The opposite party no.1 was substituted as the surviving son of the deceased/original plaintiff.

The petitioner/mother of the opposite party no.1 submits that she has a right to be substituted as a plaintiff. The defendants are her other children. Apart from the opposite party no.1 who had been substituted, she should also be substituted as a plaintiff.

The application for addition of party was filed by the opposite party no.1 when the defendants brought it to the notice of the court that the plaintiff had died, leaving behind his widow as also the opposite parties. The plaintiff contends that she had a right to be substituted as a plaintiff instead of as defendant.

The petitioner is always at liberty to approach the learned court below and file an application for transposition on the grounds stated therein. If such application is filed, the same shall be disposed of within a period of two weeks from the date of filing of the application, upon granting liberty to the opposite parties to file their objections.

The order dated April 29, 2022 passed by the learned Civil Judge (Senior Division), Hooghly (Sadar) in Title Suit No.264 of 2020, is modified to the above extent.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)