

S/L 19
17.4.2023
Court No.652
SD

CO 2317 of 2021

Bholanath Ghosh

Vs.

Ramesh Chandra Ghosh, since deceased, represented by
Kabita @ Sabita Ghosh & Ors.

Mr. S.R. Saha

...for the Petitioner.

Mr. Arjun Samanta

...for the Opposite Parties.

This is an application under Article 227 of the Constitution of India, has been directed against the order dated 22.01.2021 passed by the learned Additional District Judge, 2nd Court at Barrackpore in Title Appeal No.16, 2018.

By the impugned order, the court below was pleased to reject appellant's application under Section 5 of the Limitation Act and was further pleased to hold that the Title Appeal as a whole has been abated against sole Respondent.

The petitioner contended that the petitioner herein as appellant filed the aforesaid appeal before the First Appellate Court and during pendency of the appeal, the sole respondent, Ramesh Chandra Ghosh died on 14.6.2020 during covid pandemic. The appellant herein took out an application for substitution of the legal heirs of the respondent on December 23, 2020 and on the same date, an application under Section 5 of the Limitation Act was also filed.

Learned court below ignoring the fact that the covid pandemic situation was prevailing throughout the country at

the relevant point of time was pleased to hold that after expiry of 90 days reckoned from the date of death, i.e., 14.6.2020, the appeal has got abated, since no application for substitution has been made even within 150 days from the date of death of sole respondent.

Learned counsel appearing on behalf of the petitioner submits that in view of suo motu writ petition, the Hon'ble Supreme Court in the judgment reported in (2022) 3 SCC 117 was pleased to extend the limitation period for filing application up to February 28, 2022 and accordingly, the application for substitution was well within time and no case of abatement occurred in the said appeal and accordingly, learned court below was erred in rejecting the application under Section 5 of the Limitation Act.

Learned counsel appearing on behalf of the opposite parties submits that the order impugned reveals that the name of the legal heirs of the deceased respondent has not been correctly mentioned in the substitution application. However, he admits that at the relevant point of time covid pandemic was prevailing.

Having considered the facts and circumstances of the case and also considering the judgment as reported in (2022) 3 SCC 117, the order impugned dated January 22, 2021 is hereby set aside.

Liberty is given to the appellant/petitioner herein to amend the application for substitution in connection with correcting the name(s) of the legal heir(s) of the deceased respondent and in the event of filing such amendment

application, the court below will consider the application for amendment as well as application under Section 5 of the Limitation Act and the application for substitution filed by the appellant in the light of judgment passed by the Hon'ble Apex Court, reported in (2022) 3 SCC 117 at the earliest.

Accordingly, CO 2317 of 2021 is disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)