

Item No. 14
06.12.2023
Court. No. 19
GB

C.O. 3749 of 2022

Smt. Protima Saha
Vs.
Sri Nikhil Das & Ors.

*Mr. Arijit Sarkar,
Ms. Prajaini Das*

...for the Petitioner.

*Mr. Arnab Roy,
Mrs. Sayani Ahmed*

...for the Opposite Parties.

The petitioner is aggrieved by the order dated August 5, 2022 passed by the learned Additional District Judge, 1st Court at Barasat.

According to the petitioner, the learned court erred in rejecting the application dated June 1, 2022. By the said application the petitioner prayed for a direction on the contesting defendant no.1 to disclose the names of the heirs of Smt. Pabitra Rani Ghosh, so that substitution could be effected. The ground taken was that at the time of deposition of the defendant no.1 (Nikhil Das), the petitioner for the first time came to know that Smt. Pabitra Rani Das had expired.

According to the petitioner, it was incumbent upon the defendant under the provisions of the Code of Civil Procedure to supply the names of the heirs of Smt. Pabitra Rani Ghosh.

The defendant no.1 filed a written objection to the said application, inter alia, stating that the factum of death of Smt. Pabitra Rani Ghosh was already on record. An objection was filed on an earlier occasion to an application for substitution of

the heirs of some other deceased defendant, in which such fact had been stated. The suit had abated in respect of the said deceased defendant, Smt. Pabitra Rani Ghosh long ago and no relief could be granted to the petitioner as claimed in the application dated June 1, 2022.

The learned court below was of the view that the petitioner was aware of the death of Smt. Pabitra Rani Ghosh from the written objection filed long ago, but did not take any steps. Thus, it would not be proper to direct the defendant no.1 to furnish the said names. Hence, the application was dismissed.

The learned advocate for the petitioner submits that even if, the petitioner had knowledge of the death of Smt. Pabitra Rani Ghosh and had not taken steps for substitution thereby allowing the suit to abate against the said defendant, the law provides a mechanism to enable the petitioner to file an application for substitution, upon setting aside abatement upon condonation of delay. If the names are supplied at this stage too, steps could be taken by the petitioner. It is further submitted that apart from the defendant no.1 none other contested the suit.

Mr. Roy, learned advocate for the contesting defendant submits that the factum of death of Smt. Pabitra Rani Ghosh was known and disclosed in 2016, but the defendant no.1 does not have any information as to who are the heirs of Smt. Pabitra Rani Ghosh. Mr. Roy further submits that Order 22 Rule 10A would not come into operation in this case because the defendant no.1 was not liable to intimate the names of the

heirs of a deceased defendant, who were not connected with the defendant no.1.

It is vehemently urged that the deceased defendant did not ever contest the suit. Under such circumstances, the revisional application is disposed of granting liberty to the petitioner to file an application for necessary orders in terms of Order 22 Rule 4(4) of the Code of Civil Procedure and the learned court shall decide the said application strictly in accordance with law, upon noting the fact that although the defendant no.1 was aware of the death of Smt. Pabitra Rani Ghosh, the defendant no.1 specifically claimed before the court that the names of the heirs were not known to him. There was no commonality of interest between the deceased defendant and the defendant no.1.

Accordingly, the revisional application is disposed of.

However, there shall 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.)