

Item No. 24
28.02.2024
Court. No. 19
GB

C.O. 771 of 2023

Rekha Sarkar & Ors.
Vs.
Animesh Sarkar & Ors.

*Mr. Sayan Sinha,
Mr. Adil Naser*

...for the Petitioners.

*Mr. Anjan Ray,
Mr. Subhajit Chowdhury,
Mr. Souvanik Mahapatra*

...for the Opposite Parties.

The revisional application arises out of an order dated February 2, 2023, passed by the learned Civil Judge (Senior Division), 3rd Court at Howrah in Title Suit No.260 of 2019.

By the order impugned, the learned court directed the plaintiffs to file the death certificate of the deceased defendant no.10 under the misconception of law that without the death certificate of the defendant no.10 which was to be filed by the plaintiffs, the application for substitution could not be allowed. The law does not provide so. Order 22 Rule 4 of the Code of Civil Procedure is quoted below:-

“4. Procedure in case of death of one of several defendants or of sole defendant -(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

[(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who having filed it, he failed to appear and contest the suit at the hearing; the judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.]”

The petitioners filed an application to substitute the wife and the son of the deceased defendant. The application under Order 22 Rule 4 was filed within time and hence, the same is allowed. The learned court below shall take steps for amendment of the plaint and thereafter proceed in accordance with law.

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.)