

Item No.11
21.05.2024
Court. No. 19
GB

C.O. 823 of 2023

Sri Babu Basu Chowdhury @ Siladitya Bose Chowdhury
Vs.
Sri Chandan Bhattacharjee & Ors.

Mr. Ayan Banerjee,
Mr. Soumo Chaudhury

...for the Petitioner.

1. The revisional application arises out of an order dated September 5, 2022, passed by the learned Civil Judge (Junior Division), Bidhannagar in Ejectment Suit No.34 of 2014.
2. By the order impugned, the learned court refused to record abatement of the suit as a whole. The learned court was of the view that the suit would not abate as one of the defendants was a party to the suit. That the deceased defendant, allegedly one Sanjoy Bose Chowdhury (Swapan) had been substituted in place of the original tenant who had died during the pendency of the suit. The deceased defendant, Sanjoy Bose Chowdhury @ Swapan Basu Chowdhury allegedly died on June 13, 2019.
3. On the death of Sanjoy Bose Chowdhury, it was alleged by the petitioner, who is the defendant no.2 in the suit that as no steps had been taken by the plaintiffs to substitute the legal heirs of Sanjoy Bose Chowdhury, the suit had abated as a whole, as 90 days

had passed since the death of Swapan Basu Chowdhury @ Sanjoy. It was further contended that as the suit was proceeding against both Swapan and Babu, being the heirs (sons) of the original tenant Bimalendu Basu Chowdhury, the eviction suit should stand abated as a whole as an eviction decree was indivisible. Reliance is placed on the decision of the Hon'ble Apex Court in the matter of ***Bakshish Singh (dead) by LRS. Versus Arjan Singh and Others*** reported in ***(1996) 8 Supreme Court Cases 323***.

4. The learned court was of the view that the question of abatement of the suit as a whole would not arise on the death of Sanjoy Bose Chowdhury @ Swapan as the other defendant was contesting the suit and the learned court had fixed the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 for hearing.
5. First and foremost, this is a suit under the West Bengal Premises Tenancy Act. The ground for eviction is reasonable requirement. The suit was filed for eviction of Bimalendu, predecessor-in-interest of Sanjoy (since deceased) and Babu, who was the tenant as per the plaint case. Bimalendu allegedly died sometime in 2014, during the continuation of the suit, and his sons were substituted. Subsequently, one of the substituted sons also died. A prayer was made for

recording abatement of the suit as a whole on the ground that the eviction suit could not continue as the heirs of the tenant (deceased) were not made parties. The learned court rightly held that one of the sons of the original tenant was contesting the suit and the suit would not abate as a whole.

6. In my view, asking this Court to hold that the suit would abate if the heirs of the deceased Sanjoy, namely, grandchildren and widow of a deceased son of the original tenant were not brought on record, would amount to giving a premium to the tenant and pre-deciding the issue, that is, effect of the provisions of Section 2(g) of the said Act.
7. The suit shall proceed in accordance with law and the issues raised by Mr. Banerjee, learned advocate for the petitioner, can be raised at the appropriate stage.
8. Accordingly, the revisional application is disposed of.
9. However, there will be no order as to costs.
10. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)