

Ct. No. 652
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2024

C.O. 854 of 2021
Piyer Md. Gayen & Ors.
-Versus-
Asanbani Samaj Unnayan Committee
Represented by Abdul Majid Mondal & Ors. & Ors.

Mr. Subhas Chandra Atha
Ms. Payel Paramanik **...For the Petitioners**
Mr. Kaushik Dey **...For the Opposite Parties**

Order No. 269 dated 5th February, 2021 passed by the learned Civil Judge (Junior Division), Additional Court, Bankura in Misc. Case No. 69 of 2018 in connection with Title Suit No. 19 of 2013, is under challenge in the present application. By the order impugned the Court below allowed the plaintiffs' application under Section 5 of the Limitation Act and thereby set aside the order of abatement and substituted the legal heirs of deceased defendant No. 12.

Being aggrieved by that order the petitioners herein contended that the plaintiffs/opposite parties herein filed two applications when the suit was ordered to be abated as a whole. One for review of the order of abatement contending that the Court below had wrongly declared that the suit has been abated as a whole when the right to sue survives to the other plaintiffs and another application under Order XXII Rule 9 read with Section 151 of the Code of Civil Procedure, wherein the plaintiffs have prayed for setting aside the abatement and for substitution of the legal heirs of deceased

defendant No. 12.

According to Mr. Subhas Chandra Atha, learned Counsel appearing on behalf of the petitioners, the Court below erred in law in taking up both the applications simultaneously and disposed of both the applications by the self-same order. The Court below ought to have first decided whether the suit has been abated as a whole or not and then he should have taken up the application under Order XXII Rule 9 of the Code. Such simultaneous passing of the order has caused miscarriage of justice and accordingly the petitioners have prayed for setting aside the order impugned.

Mr. Kaushik Dey, learned Counsel appearing on behalf of the opposite parties submits that on 22nd April, 2016 the Court below recorded that the suit has been abated as a whole since the plaintiffs had not taken any step in respect of the deceased defendant No. 12, Sudhir Kumar Dey, who expired on 19th October, 2015. However, on the self-same day the plaintiffs prayed before the Court below for a direction upon the defendants to furnish the names of the legal heirs of the deceased defendant No. 12. But the defendants did not furnish the details of the legal heirs and as such the plaintiffs had to search for details of the legal heirs of the defendant No. 12 and after getting the same they have

made the said application for which the delay has been caused in filing the application, which is not intentional.

I have considered the respective submissions. The order impugned clearly states that the Court below after considering the fact that the plaintiffs on 26th November, 2015 prayed for furnishing details about legal heirs of the deceased defendant No. 12 and also relying upon the earlier order Nos. 230 and 231 dated 5th September, 2018, came to a conclusion that the plaintiffs had exercised due diligence upon being informed and the delay occurred due to non-availability of required information and accordingly the Court below came to a finding that the cause shown is sufficient for condonation of delay.

In considering the reason for condonation of delay specially in case of Order XXII, Rule 9, the Court has to keep in mind that a valuable right accrues to the legal representatives of the deceased defendant No. 12 when the suit abates and refusal to condone delay on the prayer for setting aside abatement order if made, interpreting the term “*sufficient cause*” under Section 5 of the Limitation Act in a strict manner, it may amount to punish the plaintiff with foreclosure of the suit for unintended lapses. The word “*he was prevented by any sufficient cause from continuing the suit*” as used in Rule 9(2) of Order XXII, should be

understood and applied in a reasonable, pragmatic and liberal manner, of course depending upon facts and circumstances of the case, so that substantial rights of the parties cannot be defeated by pedantic approach observing strict adherence to the procedural aspects of law. While considering the prayer for setting aside abatement after condonation of delay on “*sufficient ground*” the Courts are to strike a balance between resultant effect of the order,, it is going to pass upon the parties either way and it would be unjust to non-suit the plaintiff only on the ground of technicalities.

In view of above and when there is nothing to show that the delay was occasioned by the plaintiff deliberately or to gain time and when there is apparently no smack of mala fide in making the prayer, I do not find any illegality or perversity in the ultimate finding of the order impugned.

In such view of the order I find that this is not a fit case which calls for interference by this Court under Article 227 of the Constitution of India invoking supervisory jurisdiction. Accordingly, the revisional application, being C.O. 854 of 2021 is dismissed.

As it appears that the suit is pending for more than a decade before the filing Court, the Court below is directed

to make every endeavour for expeditious disposal of the suit and to conclude the entire proceeding preferably within a period of 10 (ten) months from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)