

Item No.1
06.02.2024
Court. No. 19
GB

C.O.2821 of 2022

The Kolkata Municipal Corporation
VS
Administrator General, State of West Bengal

Mr. Arijit Dey

...for the Petitioner.

*Mr. Indranil Nandi,
Mr. Sayak Koner*

...for the Opposite Party.

1. Affidavit-of-service filed in Court today, be kept with the record.
2. Despite issuance of notice upon the learned advocate of the deceased judgment debtor, none appears to oppose the application.
3. The specific case of the petitioner is that, the judgment debtor died without leaving behind any heir or legal representative. The learned advocate representing the judgment debtor also submitted before the learned court that the original defendant expired. Thereafter, her son was substituted. The son died and at present, there are none to represent the judgment debtor. Despite best efforts, the petitioner/decreed-holder has not been able to trace out any heir. Even, the learned advocate for the deceased judgment debtor could not trace out any heir or supply the name of such heir.
4. Under such circumstances, the petitioner/decreed-holder filed an application before the learned court below, under

Section 50 read with Section 146 and 141 of the Code of Civil Procedure. The position is that none has come up to be substituted as heir and/or legal representative of the judgment debtor. There is apparently none to represent the estate of the deceased.

5. The learned advocate for the deceased judgment debtor has also not shown any interest to pursue the matter by supplying the names of the possible heirs of the deceased judgment debtor.
6. Whereas, the decree-holder is not being able to execute a decree which was passed in 1987. This is a suit of 1983. The decree-holder is suffering immensely, due to such delay. The provisions of law under Order 22 Rule 4A of the Code of Civil Procedure prescribes the procedure to be followed when there is no legal representative. It provides that the court may, on the application of any party to the suit, proceed in the absence of the person representing the estate of the deceased or may order appointment of the Administrator General to represent the estate of the deceased.
7. In this case, the petitioner prayed for addition of the Administrator General, to represent the estate of the deceased, so that the decree could be executed. The application was dismissed. The order impugned suffers from material irregularity.
8. It further appears that an adjournment was prayed for before the Registrar, City Civil Court at Calcutta on behalf of the decree-holder, when the revisional application was

pending. The execution case was dismissed for non-prosecution, on the ground that a prayer for adjournment was made on behalf of the decree-holder.

9. In my opinion, such dismissal was perverse and has caused grave injustice. The learned court recorded that the case was pending for the last 23 years. In my opinion, the case was not pending at the instance of the decree-holder. The execution was pending because the defendant as also the substituted defendant had expired and the decree-holder was not being able to execute the decree in the absence of intimation as to who were the heirs and legal representatives of the judgment debtor. At such a juncture, the application by the decree-holder was filed for addition of the Administrator General to represent the estate of the deceased which was also dismissed. The order was challenged. The suit was dismissed thereafter.
10. Thus, the order dated September 12, 2022 is recalled. The order impugned dated February 17, 2022, is set aside. The learned court below is directed to implead the Administrator General as a defendant in the execution proceeding on the basis of the order of this Court on usual terms and conditions. The plaintiff, upon such addition, will comply with the necessary formalities as may be directed by the court. The execution proceeding shall continue in accordance with law with the Administrator General representing the estate of the deceased.

11. Liberty is granted to the petitioner to correct the cause title and the prayer portion by incorporating the order dated September 12, 2022, as well.
12. Accordingly, the revisional application is disposed of.
13. However, there will be no order as to costs.
14. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)