

March 27, 2024
Sl. No.A 72
Court No.19
s.biswas

CO 3558 of 2023
Smt. Shibani Roy
vs.
Sri Jaydeb Saha and others

Mr. Sanjay Saha

... for the petitioner

1. There is no impediment to take up the matter, as no caveat has been lodged.
2. The petitioner is aggrieved by an order dated September 11, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah in Title Suit No.312 of 2022. The petitioner had filed an application seeking exemption from substituting the heirs and legal representatives of deceased defendant no.1.
3. According to the petitioner, all modes of service upon the said deceased defendant had failed. Suddenly, an application was filed without any detail as to who had filed the said application, intimating the court that the defendant no.1 had died leaving behind Arati Saha (wife) and Rintu saha w/o Pinaki Saha (daughter).
4. The learned court upon perusal of the application was of the view that steps should be taken for substitution of Arati Saha (wife) and Rintu Saha (daughter).

5. I do not find any illegality in the order impugned.
The contention of the petitioner that as service upon the defendant no.1 had failed on various occasions and further substitution would yield the same result, cannot be raised at this stage. If the defendant no.1 has expired, his heirs are required to be substituted. The names of such heirs have already been intimated to the court. The learned court rightly directed the petitioner to take steps, in accordance with law. However, if the contention of the petitioner appears to be correct that the said defendant no.1 was trying to evade service, such issue shall be raised at the appropriate time, if service upon the said substituted heirs fail once again.
6. The contention of the petitioner that several attempts to serve the defendant no.1 had failed, and it was likely that the same would happen in case of any attempt of service upon the substituted heirs, cannot be decided at this stage, by this court.
7. The revisional application stands disposed of accordingly. The order impugned is upheld.
8. All the parties are directed to act on the basis of the server copy of the order.

9. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)