

06.02.2024
Court No. 19
Item No.15
CP

C.O. No. 3957 of 2023

Karan Thakur
Vs.
Soma Banerjee & Ors.

Mr. Debdipto Banerjee
Mr. Soumen Banerjee
.....for the petitioner.

1. A technical objection has been raised by the petitioner in this revisional application. According to the petitioner, the learned Civil Judge (Junior Division), Bidhannagar, North 24 Parganas erred in passing the order dated August 19, 2023 in Misc. Case No. 51 of 2022. It is alleged that the learned court, in exercise of the inherent power, removed the defect in the application under Order 22 rule 9 of the Code of Civil Procedure and allowed the prayer for setting aside abatement of the suit.

2. This is is a suit for eviction. The sole defendant died on August 29, 2021. On March 14, 2022, the learned advocate for the deceased defendant intimated such fact to the learned court, but the names of the heirs and legal representatives were not disclosed. The suit abated. The plaintiffs, despite their sincere attempts, could not obtain the names of the legal heirs and successors of the deceased

defendant. Ultimately, the plaintiffs filed an application for the setting aside abatement of the suit on account of death of the sole defendant, whose heirs were not substituted within the prescribed period. The same was registered as Misc. Case No.51 of 2022. The plaintiff came to know about the names of the heirs of the deceased defendant from the bailiff's report. Accordingly, an application for substitution was also filed, for substituting the heirs.

3. The learned court took up both the applications and disposed of the same, *inter alia*, holding that the defect in mentioning the name of the deceased in the cause title of the application for setting aside abatement of the suit would not be fatal as an application for substitution had also been filed in the said Misc. Case. The technical error could be corrected by exercise of inherent power. An application had been filed for incorporation of names of the heirs of the deceased in the Misc. Case. Thus the applications were allowed.

4. This court finds that the names of the heirs of the deceased were mentioned in paragraph 4 of the said application under Order 22 Rule 9 of the Code of Civil Procedure. Mentioning the wrong name in the cause title was a mistake, but a curable one. The defect in the cause title was removed by the learned

court. The order is not illegal. There is no perversity. If the contention of the petitioner is accepted, in that event, the entire exercise would have to be redone, although the law provides that abatement of the suit can be set aside upon condonation of delay, by allowing substitution of the heirs. For the ends of justice, such exercise of power was within the discretion of the court. The Rules of Procedure is the handmaid of justice. The same cannot be used as a sword.

5. The revisional application is, thus, disposed of.
6. There shall be no order as to costs.
7. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)