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25.04.2024
Ct. No.2
b.das

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction**

CO 159 of 2023

**Smt. Shudhan Barman
vs.
Pratul Chandra Barman @ Pratul
Barman & Ors.**

**Re: An application under Article 227 of the
Constitution of India.**

Mr. Nabankur Pal ... for the petitioner.

Ms. Suman Sehanabis (Mondal)

Mr. Tathagata Biswas

...for the opposite party.

Affidavit of service filed by the petitioner is
taken on record.

Heard learned counsels for the parties.

The petitioner has assailed the order of the
Civil Judge, Junior Division, Tufanganj dated 25th
July, 2022 allowing the application of the
opposite parties filed under Order 1 Rule 10(2) of
the Code of Civil Procedure read with Section 151
of the Code.

Learned counsel for the petitioner submits
that the application has been filed after about 3
years of the expiry of the 3rd petitioner in the
Misc. (Pre-emption) case being no.7 of 2014,

Ananta Chandra Barman. The case abated in the mean time despite which the opposite parties, instead of praying for setting aside the said abatement, filed an application for addition of party by circumventing the procedure under order 22 of the Code.

Learned counsel further submits that expiry of the 3rd petitioner in the Misc. case came to light during cross-examination of the witnesses, following which the application was filed.

In refuting the contention of the petitioner, learned counsel for the opposite parties submits that since the petitioner nos.1 and 2 who are the legal heirs of the deceased petitioner in the Misc. case were already represented, there was no question of abatement of the Misc. case. Also, the law of limitation does not apply to an application under Order 1 Rule 10(2) of the Code. The delay in filing the application has been sufficiently explained in the application itself.

The opposite parties are also the legal heirs of the deceased in addition to the other petitioners in the Misc. case, though sought to be added as parties therein by an application under Order 1 Rule 10(2).

Learned counsel for the opposite party places reliance on the authorities in **Banwari Lal (Dead) by Legal Representatives & Anr. vs. Balbir Singh, reported in (2016) 2 WBLR (SC) 24, Razia Sultana Khan & Anr. vs. Nazemul Huda reported in (2017) 4 WBLR (Cal) 145 and Shivshankara & Anr. vs. H. P. Vedavyasa Char reported in 2023 Livelaw (SC) 261** in support of her contention.

It is not in dispute that petitioner nos.1 and 2 in the Misc. case are legal heirs of the deceased petitioner Ananta Ch. Barman and the opposite parties herein are also his legal heirs.

Admittedly, the deceased was not substituted by the present opposite parties in accordance with the provision laid down under Order 22.

It is trite law that when the deceased is already represented by his legal heirs in a case, the question of abatement of the case due to his expiry does not arise.

In the authority in Banwari Lal (supra), the Hon'ble Supreme Court has held that though the prescribed procedure cannot be circumvented by filing an application under Order 1 Rule 10 of the Code of Civil Procedure, it would be unjust to

non-suit the appellants on the ground of technicalities.

Even if it is held that the application under Order 1 Rule 10 was filed in order to circumvent the rigors of an application under Order 22, the application cannot be rejected on such technicalities. Since the opposite parties are also the legal heirs of the deceased in addition to other petitioners in the Misc. case and are necessary parties therein, delay in filing the application under Order 1 Rule 10 ought to be condoned and they ought to be favoured with an opportunity to place their contention before the Court.

In view of the above, this Court is inclined to hold that the order impugned does not suffer from any infirmity which calls for interference by this Court.

In the result, the application being CO 159 of 2023 is dismissed.

The order dated 25th July, 2022 passed by the Civil Judge, Junior Division, Tufanganj in Misc. (Pre-emption) case no.7 of 2014 is affirmed.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh, J.)