

APO No. 83 of 2024
with
CS No. 271 of 1976
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Pritam Jalan
Versus
Promode Kumar Jalan & Ors.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice PARTHA SARATHI SEN
Date: 5th September 2024

Appearance:
Mr. Suddhasatva Banerjee Advocate
Mr. Rishav Karnani, Advocate
Mr. Anurag Bagaria, Advocate
Mr. Devansh Sonthalia, Advocate
for the appellant

Ms. Noelle Banerjee, Advocate
Mr. Abhidipta Tarafdar, Advocate
Mr. Dipak Dey, Advocate
Mr. Aniket Ojha, Advocate
for the respondents

Mr. Aritra Deb, Advocate
Ms. Arti Bhattacharya, Advocate
for respondent no.6(b)

1. The Court: The order dated January 4, 2024 as passed in IA No: GA 6 of 2023 in CS No. 271 of 1976 is the subject matter of the instant appeal.

2. By the impugned order the learned trial court dismissed the said application being GA No. 6 of 2023 holding that the present appellant's application for substitution and/or addition of party cannot be entertained in view of the specific provision of order XXX Rule 4(1) of the Code of Civil Procedure.

3. In course of his submission Mr. Banerjee, learned advocate for the appellant draws our attention to the petition filed

before the learned trial court. Drawing attention to the prayers of the plaint of the said suit it is contended by Mr. Banerjee for the appellant that in the original suit the plaintiff no.1 is a partnership firm and the plaintiff no.2, since deceased was a partner of the said partnership firm and also a nominee to the said firm.

4. It is further argued by Mr. Banerjee that during pendency of the said suit the plaintiff no.2 being a partner of the plaintiff no.1 firm died and the present appellant being his legal heir as well as a partner of the plaintiff no.1 firm as well as a nominee of the plaintiff no.1 firm has made the said application praying for his name be substituted in place and stead of the deceased plaintiff no.2 which the learned trial court has failed to consider.

5. In course of his argument Mr. Banerjee also draws our attention to paragraph 17 of the petition which has been rejected by the learned trial court wherein it has been specifically averred that the present appellant is not only the legal heir of the plaintiff no.2 but also a partner of the plaintiff no.1 firm as well as a nominee of the said partnership firm.

6. It is thus submitted by Mr. Banerjee that there cannot be any predicament in allowing the appeal vis a vis in allowing the application praying for substitution by setting aside the impugned order.

7. Per contra, Ms. Noelle Banerjee, learned advocate for the legal heirs of the deceased respondent no.5 submits before this court that the learned trial court rightly noticed the embargo as quoted in Order XXX Rule 4(2) of the Code of Civil Procedure, since the plaintiff no.1 is a partnership firm and the present appellant cannot be substituted as a legal representative of the plaintiff no.2 since the plaintiff no.2 in the said suit did not sue the defendants in his

individual capacity and on the contrary he has sued the defendants as nominee and partner of the plaintiff no.1 firm. Furthermore, it is submitted that there is no infirmity in the order impugned and thus the appeal may be dismissed.

8. Learned advocate for the respondent no.6(b) echoes the submission as made by Ms. Noelle Banerjee, learned advocate for the legal heirs of the deceased respondent no.5.

9. We have meticulously gone through the application which has been filed by the present appellant before the learned trial court. We have also gone through the impugned order which is challenged before us.

10. Admittedly, before the learned trial court the plaintiff no.1 is a partnership firm and the deceased plaintiff no.2 was its partner as well as a nominee. In the petition filed before the learned trial court, we find specific pleadings to the effect that after the death of the plaintiff no.2 being a partner and nominee of plaintiff no.1 firm, the present appellant has been nominated by the plaintiff no.1 firm.

11. Admittedly, in paragraph 28 of the said application the present appellant has prayed for substitution in place and stead of deceased plaintiff no.2. In our considered view, since the appellant before us has specifically pleaded that he is a partner of the plaintiff no.1 firm and also a nominee of the plaintiff no.1 partnership firm, there cannot be any impediment in adding the present appellant as plaintiff no.2 in place of deceased plaintiff no.2 as would reveal from the cause title of the application filed before the learned trial court.

12. It is trite law that *non-quoting of correct provision of law is no ground to refuse the relief if the party is entitled to such relief under some other provision which is not quoted or mentioned*. The same has been held in a reported decision **Nicholas Piramal India Ltd. -vs-**

Cultor Food Science Inc. and Others' reported in **AIR 2003 Andhra Pradesh 254.**

13. Such being the position, the instant appeal is allowed.

14. Consequently, the impugned order dated January 4, 2024 as passed in connection with IA No: GA 6 of 2023 in CS No. 271 of 1976 is hereby set aside.

15. The prayers (a) to (e) of the Master's Summons in IA No: GA 6 of 2023 stand hereby allowed.

16. The appeal is thus disposed of along with all pending connected applications.

(I. P. MUKERJI, J.)

(PARTHA SARATHI SEN, J.)

R. Bose