

M/L- 71
11/03/2025
Ct. No.-6
Aritra

C.O. 467 of 2025

**Marie Fransisca Magno Advani & Ors.
Versus
Ashim Kumar Dutta & Anr.**

Mr. Anupam Bhattacharya
Mr. Sudhakar Thakur
Ms. Sana Sultana
...for the petitioner

Mr. Tarique Quasimuddin
Ms. Sanchita Chaudhuri
Ms. Syed Khafiz Zamar
....for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the heir and heirs of the deceased defendant No.2 and is directed against an order being No.65 dated December 20, 2024 passed by the learned Judge, 2nd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.192 of 2016.

By the order impugned the application under Order 1 Rule 10(2) of the Code of Civil Procedure filed by the petitioner herein stood rejected.

The learned advocate appearing for the petitioner submits that upon the death of the defendant No.2, the right to sue survives against the petitioner herein and for such reason the petitioners herein are to be substituted in place and stead of the deceased defendant No.2.

The learned advocate appearing for the opposite party vehemently opposes the submissions made by the learned advocate for the petitioner. He submits that on September 7, 2022 the plaintiff/opposite party herein filed a petition stating that he has received an information that the defendant No.2 has died but he was not aware of the date of death and on the said date the learned advocate representing the defendant No.2 filed hazira. He further submits that neither the date of death of the defendant No.2 nor the particulars of heir and heirs of the deceased defendant No.2 was furnished by the learned advocate for the deceased defendant No.2 in spite of a letter being served upon the learned advocate for the defendant No.2.

However, after going through the materials on record this Court finds that the heirs have now approached the learned Trial Judge praying for adding them as defendants in the suit. Though the application was captioned as one under order 1 Rule 10(2) of the Code of Civil Procedure but the fact remains that the petitioner herein has sought for being substituted in place and stead of the heirs and legal representatives of the deceased defendant No.2. Though no prayer for setting aside the abatement has been made but after considering the fact that the instant suit is a suit for eviction and the heirs of the deceased defendant No.2 have approached the Court for being substituted in

place and stead of the deceased defendant No.2, this Court is of the considered view that the application filed by the petitioners have to be construed to be an application for substitution after setting aside the abatement upon condonation of delay.

The learned Trial Judge rejected the said application on the ground that the application under Order 22 Rule 4 of the Code of Civil Procedure was not filed within the prescribed period of limitation. But after going through the substance of the said application and taking note of the fact that the defendant No.2 died in the United States of America on July 6, 2022 and the death certificate of the defendant No.2 has been annexed to the civil revision application, this Court is of the view that the interest of justice would be sub-served if the petitioners herein are substituted in place and stead of the deceased defendant No.2 after setting aside abatement.

Considering the fact that the delay for substituting the heir and heirs of the deceased defendant No.2 is attributable to the heirs of the said defendant, this Court is of the considered view the delay shall be condoned subject to payment of cost by the petitioners to the opposite parties.

In view thereof, the application captioned as one under Order 1 Rule 10(2) of the Code of Civil Procedure is treated to be an application under Order 22 Rule 9 of

the Code of Civil Procedure and the same stands allowed and the petitioners be substituted in place and stead of the deceased defendant No.2 after setting aside abatement on condonation of delay subject to payment of cost of Rs.5000/- to be paid to the plaintiff/opposite party herein within two weeks from date. In default, of payment of cost, this order shall stand automatically recalled without any further reference to this Court. The heir and heirs as specifically mentioned in the said application be substituted in place and stead of the deceased defendant No.2 and the learned Trial Judge is directed to make necessary amendments in the cause title of the plaint of the suit in terms of this order.

At this stage, the learned advocate appearing for the opposite party submits that this is a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, *inter alia*, on the ground of reasonable requirement and the same is pending from the year 2016 and also that more than two years have lapsed for substituting heirs of the deceased defendant No.2. He prays for a direction for expeditious hearing of the suit.

The learned Judge, 2nd Bench, Presidency Small Causes Court at Calcutta is requested to dispose of the Ejectment Suit No.192 of 2016 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

With above observations CO 467 of 2025 stands allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)