

06.05.2025

Court No.652
Sl. No.111
Mujahid

CO 953 of 2023

Gunadhar Jana & Ors.
Vs.
Santosh Mahato & Ors.

Mr. Rabindranath Mahato,
Mr. A. Shankar Ray

...for the petitioners

Mr. Sukanta Das,
Mr. Chandrachur Lahiri

...for the opposite parties

Present petition has been filed challenging the orders dated 28th October, 2022 and 8th December 2022.

Learned Civil Judge (Junior Division) 3rd Court, Paschim Medinipur, vide order 28th October, 2022 dismissed the petition for default, inter alia, holding that would be a luxury litigation. Learned Trial Court also dismissed the petition under Order 1 Rule 10(2) of CPC being misconceived.

Pursuant to this, the petitioner/plaintiff filed an application under Section 151 of CPC for recalling the order dated 28th October, 2022. The petition was also rejected by the Trial Court vide impugned order

No.44 dated 8th December, 2022 with the cost of Rs.500/-.

Learned counsel for the petitioner states that the learned Trial Court had fallen into error by dismissing the suit in default without deciding the petition under order 1 Rule 10 of CPC for deletion of the name of defendant Nos. 8 and 12.

Learned counsel for the petitioner submits that though the show case was not filed by the petitioner for his non appearance on the earlier dates, but since the petition under Order 1 Rule 10 was pending, learned Trial Court should have disposed of the same on merits. Learned counsel for the petitioner further submits that the petitioner/plaintiff or his advocate could not appear on account of covid pandemic. Learned counsel also submits that this application under Section 151 of CPC could have been considered as the show cause and the suit should have been restored.

Learned counsel submits that it is necessary to adjudicate whether defendant Nos.8 and 12 had died before the institution of the suit. Learned counsel prays that the orders dated 28th October, 2022 and 8th December, 2022 be set aside and Title Suit No.146 of 2017 be restored.

Learned counsel for the opposite party has vehemently opposed the same. Learned counsel

submits that plaintiff/petitioner knew very well that respondent Nos.8 and 12 have died on 11th August, 2019 and 28th August, 2019. Learned counsel for the opposite party has also produced the death certificate.

Learned counsel submits that in fact, the suit in any case is liable to be abated as no application was filed for substitution of legal heirs. Learned counsel submits that under the grab of application under Section 151 of CPC. The plaintiff/petitioner wanted to circumvent the procedure of Order 22 Rule 9 of CPC.

The Court has considered the submissions of both parties. The orders dated 28th October, 2022 and 8th December, 2022 makes it clear that the learned Trial Court dismissed in default for the failure of the plaintiff/petitioner to file show cause while recording the casual approach of the plaintiff/petitioner. It is the matter of record that application petition under Order 1 Rule 10 of CPC was still pending consideration. The fact that the defendant Nos.8 and 12 have died before the institution of the suit or subsequently is yet to be adjudicated.

It is pertinent to mention that perusal of order dated 28th October, 2022 indicates that the written statement was signed by defendant Nos.8 and 12.

Therefore, if it is found that the defendant Nos.8 and 12 have died before the institution of the suit it may have serious consequences and this requires adjudication. Similarly, if the defendant Nos.8 and 12 have died after the institution of the suit and no application has been moved for substitution of legal heirs, the consequences as provided under Order 22 Rule 4 shall follow.

However, the Court is of the considered opinion that this requires adjudications on merits. It is also pertinent to mention here that in earlier CO 1823 of 2019 being filed by the petitioner, the coordinate Bench of this Court had granted interim protection to the petitioner, therefore, there must be some, prima face, case in favour of the petitioner.

In the facts and circumstances, the petition is restored, impugned orders dated 28th October, 2022 and 8th December, 2022 are set aside. Learned Trial Court shall decide the Title Suit No. 146 of 2017 expeditiously in accordance with law and shall also decide the petition under Order 1 Rule 10 of CPC as well as the issue of abetment without being influenced by the order of this Court.

Let the parties appear before the learned Trial Court on 12th June, 2025. Department is directed to send copy of the learned Trial Court.

Accordingly, CO 953 of 2023 is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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

(Dinesh Kumar Sharma, J.)