

FMAT 263 of 2025
CAN 1 of 2025 (stay)

Shri Rajiv Khaitan & Anr.
Vs.

M/s. Bajaj Holdings and Investment Ltd. & Ors.

Mr. Sourav Roy ... for the appellants

Mr. Souradipta Banerjee
Mrs. Fatima Hassan
Ms. Shamrin ... for the respondents.

1. In view of the fact that the death of the defendant no. 5 was disclosed for the first time in the written statement filed by defendant no. 3 (a) and it is submitted that the defendant no. 5 in spite of service of summons did not appear and contest the suit and in such facts and circumstances an application under Section 151 of C.P.C. was filed by the plaintiff seeking a direction upon the defendant no. 3(a) to disclose the name of the legal heirs and representatives of defendant no. 5 (since deceased), the suit could not have been abated against all the defendants unless the Court comes to a finding that the suit cannot survive independent of the respondent no. 5. Moreover, the Court is required to be satisfied whether writ of summons was served upon the defendant no. 5 and in the event it reveals from the record that no steps have been taken for effecting service upon the defendant no. 5 the suit can be dismissed against defendant no. 5 irrespective of the disclosure of the death of defendant no. 5 in the written statement filed by defendant no. 3(a).
2. Moreover, it appears from the written statement filed by the said defendant no. 3(a) that the defendant no. 4 also died on 15.2.2007. The aforesaid statements would indicate that the

said defendant had knowledge of the death and this gives an impression that defendant no. 3 would be in a position to disclose the names of the legal heirs of the said defendant. It was on such impression that the application was filed seeking a direction for the disclosure of the names of deceased defendant no. 5.

3. It further appears that on 04.7.2023 xerox copy of death certificate of defendant no. 5 was filed before the learned 5th Judge, City Civil Court which appears to be prior in point of time to the written statement filed by the defendant on 31.7.2024. Hence the contention of the applicant that they became aware of the death of the defendant no. 5 only after it is disclosed by the defendant no. 3(a) in the written statement does not appear to be correct.
4. Similarly, Xerox copy of death certificate of Hastimal Kundermal Firodia was filed on 04.7.2023 but no steps have been taken for substituting the legal heirs of the said defendant. The suit was earlier dismissed and no step was taken for almost eight years for restoration of the said suit.
5. Having regard to the said conduct of the appellants, we are not inclined to interfere with the order passed by the learned Trial Court. However, we modify the impugned order to the extent that if the suit is maintainable against the other respondents depending upon the nature of the claim the suit may proceed against the contesting defendants.
6. However, we make it clear that if it is a joint cause of action and the right to sue does not survive unless all the defendants are on record the suit is liable to be dismissed.

7. The Trial Courts is also considered that whether service of writ of summons upon all the defendants have been appended, diligently and in terms of the provision of CPC.

(Soumen Sen, J.)

(Apurba Sinha Ray, J)