

Item-8. 10-03-2025

^{sg} Ct. 236

CO 2177 of 2023

Asita Sardar (Roy)
Versus
Nupur Ranjan Mondal & Ors.

Mr. Syed Arif Ahkem

...for the petitioner

Mr. Subhendu Banerjee

...for the opposite party no.10

1. The learned Counsel for the petitioner and the learned Counsel for the opposite party no.10 are present. Heard the learned Advocates for the parties.

2. The petitioner before this Court is a plaintiff in Title Suit No. 91 of 2008 pending before the learned Civil Judge, Junior Division, 3rd Court, Baruipur, South 24 Parganas. The petitioner, in the instant case, has challenged the order passed by the learned Trial Judge in dismissing the Title Suit No. 91 of 2008 by order dated 20-08-2022 on the ground that the suit has abated on account of death of defendant nos. 11 and 15. The learned Judge by the order dated 20-08-2022 was pleased to observe that the suit is abated against all the defendants.

3. It is the contention of the petitioner that the learned Judge, without considering the application for substitution and for setting aside of abatement, dismissed the suit on the ground of abatement.

4. Upon hearing the learned Advocates for the parties and considering the materials on record, it appears that the petitioner has already filed Misc. Case No. 57 of 2022 before the learned Trial Court for setting aside abatement of the instant suit.

5. As the application for setting aside of abatement is pending before the learned Trial Court, this Court is of the view that no observation should be made on the merits of the application or on the merits of the case. Thus, this application under Article 227 of the Constitution of India is disposed with a request upon the learned Trial Judge to dispose Misc. Case No. 57 of 2022 arising out of Title Suit No. 91 of 2008 in accordance with law within a short date preferably within a period of four weeks from the next date fixed.

6. It is also made clear that in the event the parties have not taken any step before the learned Trial Court with regard to death of any of the parties, they are at liberty to take necessary steps in accordance with law.

7. With the above observation, the application is disposed of.

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

(Biswaroop Chowdhury, J.)