

D/L- 23
03/09/2025
Ct. No.-6
Aritra

C.O. 3228 of 2025

Sukhendu Biswas & Ors.

Vs.

Bholanath Biswas & Anr.

Mr. Tulshi Das Ray
Mr. Tirthankar Roy

....for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order being No.143 dated May 15, 2025 passed by the learned Civil Judge (Jr. Div.), 2nd Court at Krishnanagar, District-Nadia in Title Suit No.75 of 2012.

By the order impugned, the application praying for recalling the order being No.139 dated August 2, 2024 stood rejected.

Mr. Ray, learned advocate appearing for the petitioner submits that by the order dated August 2, 2024, the application under Order 22 Rule 4 of the Code of Civil Procedure was allowed without appreciating that the said application was not filed within the prescribed time limit. He submits that the original defendant died on December 22, 2021. He, therefore, submits that the suit stood abated as the plaintiff did not take any steps for substitution within the specified time limit.

There is no dispute to the proposition of law that unless an application for substitution is filed within the

period of 90 days from the date of death, the abatement takes place and the party can apply for setting aside the abatement within a period of 60 days thereafter and after expiry of 90+60 i.e. 150 days the applicant has to file an application for condonation of delay.

However, in the case on hand, the date of death of the defendant was not disclosed. There was non-compliance of the provisions under Order 22 Rule 10A of the Code of Civil Procedure. The period of limitation shall start from the date of death. However, the date of death has been disclosed before this Court only at the time of hearing of this civil revision application and the same was not disclosed before the learned trial judge or before this Hon'ble Court in C.O. No.1670 of 2017.

Since the date of death was not intimated and there was nothing on record to show the date of death, this Court is of the considered view that the learned trial judge was right in substituting the heirs of the deceased defendant by order dated August 2, 2024.

For such reasons, this Court is not inclined to interfere with the order impugned dated May 15, 2025 thereby refusing to allow the prayer for recalling of the order dated August 2, 2025.

In view thereof, CO 3228 of 2025 stands dismissed.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)