

Court No. 6
(265719)

11.09.2025
(A 710)
(S. Banerjee)

CO 3555 of 2024

Firozuddin
Vs.
Shadaan Reyzy @ Tamannam & Ors.

Mr. Arindam Banerjee

...for the petitioner

Affidavit of service filed in Court today, is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated September 9, 2024 passed by the learned Civil Judge (Sr. Division), 3rd Court at Alipore in Title Suit No. 2580 of 2016. By the order impugned the application under Section 5 of the Limitation Act in connection with the substitution application, stood rejected.

Learned advocate appearing for the petitioner submits that the application for substitution could not be filed within time as the plaintiff no. 1 is a senior citizen and as the wife of the plaintiff no. 2 was sick due to shock on her husband's death and the children were to be look after by their mother and for which they could not contact their lawyer.

Learned trial judge after noting that the plaintiff no. 2 expired on November 14, 2022 and the substitution application was filed on March 31, 2023, rejected the said application.

It is well-settled that abatement is automatic and does not require a recording to that effect. Failure to substitute the heir of a deceased party within a period of 90 days from the date of death, would result in abatement of the suit . The applicant has a further time of 60 days from that date to apply for setting aside the abatement. If the application for setting aside the abatement is not filed within a period of 90+60 days, i.e., within a period of 150 days from the date of death, an application under Section 5 of the Limitation Act is to be filed for condonation of delay beyond the period of 150 days.

In the case on hand the application for substitution was filed beyond the period of 90 days. No prayer for setting aside the abatement was made. For such reason, this court is not inclined to interfere with the order impugned as the prayer for setting aside abatement was not made. Accordingly, CO 3555 of 2024 stands dismissed.

It is, however, made clear that dismissal of this civil revision application shall not preclude the

petitioner from filing an appropriate application in accordance with law.

If such an application is filed, the learned trial judge shall consider and dispose of the same in accordance with law.

(Hiranmay Bhattacharyya, J.)