

11.02.2025
Ct. No. 30
S.L No. 32
SM

CO 4021 of 2024
Smt. Shibani Roy
Vs
Joydeb Saha & Ors.

Mr. Sanjay Saha
.....for the petitioner

Affidavit-of-service filed be kept with the record.

The present revisional application has been preferred against the order dated 19.08.2024 passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah in Title Suit No. 312 of 2022.

The order under revision passed by the Trial Court is as follows.

T/S 312 of 2022

Today is fixed for order.

Plaintiff and the defendant no. 2 have filed their respective haziras. The record is taken up for passing order in respect of the petition U/O 22 Rule 4 read with Sec. 151 of C.P.C.

Ld. Advocate for the plaintiff submits that, an unverified and unsigned document was filed on 09.02.2023 intimating the death of defendant no. 1 and also the name of his legal heirs. Subsequently, the plaintiff filed an application U/O 22 Rule 5 with Sub-rule 4 of Rule 4 of C.P.C. challenging the sanctity and

legality of the said hand written unsigned as well as unverified document dated 09.02.2023 and the said petition was taken up for hearing on 02.08.2023. Thereafter, vide order dated 11.09.2023 this Court rejected the said application of the plaintiff and directed the plaintiff to take steps against the defendant no. 1. That order was again challenged before the Hon'ble High Court at Calcutta being C.O. no. 3558 of 2023 and vide order dated 27.03.2024 Hon'ble Court was pleased to direct the plaintiff to take steps for substitution of the legal heirs of the defendant no. 1. As such, the plaintiff has filed the instant application praying for substitution of the legal heirs of the defendant no. 1 being his wife Arati Saha and daughter Rintu Saha as substituted defendant no. 1(a) and 1(b) in place of deceased defendant no. 1 namely Jaydeb Saha.

Ld. Advocate for the defendant no. 2 raised strong objection as against the aforesaid application of the plaintiff.

Heard. Considered.

Perused the petition.

It appears that the original defendant had died in the year 2020 and this application has been filed in the year 2020 that as per the provision of the order 22 Rule 4 of CPC substituted of the defendant has to be done

within a period of 90 days failing which the suit stands abated against the defendant. Since the continuous running of time has not been stopped since the death of defendant no.1 as such it is opinion of the Court that the suit stand abated against the defendant no.1 and accordingly the plaintiff is directed to take proper steps regarding the said abatement.

To 09.12.2024 for steps.”

Sd/-

*Civil Judge (Jr. Divn), 1st Court
Sealdah*

The petitioner has also filed a supplementary affidavit as per leave granted, from wherein it appears that the application under Order 22 R 4 CPC for substitution of the legal heirs of the defendant no. 1 was filed by the plaintiff/petitioner before the Trial Court on 01.04.2024.

The learned trial Court on the finding that it has been filed beyond the period of limitation held that the suit abated against the defendant no. 1 and directed the plaintiff to take necessary steps in respect of the said abatement.

It appears from the order under revision that after filing of some applications before the Trial Court, the order of the trial Court was challenged before the High Court.

By an order dated 27.03.2024 a Co-ordinate Bench of this Court directed the plaintiff to take steps for substitution of the legal heirs of the defendant no. 1.

The plaintiff/petitioner filed an application for substitution immediately thereafter on 01.04.2024 within a period of 4 days. It was not clarified by the Court that the period of limitation would run from the date of the order and as such the trial Court considered the limitation from the date of death of the defendant no. 1.

Considering the said facts it appears that the matter was pending for adjudication before a competent Court of law and the plaintiff/petitioner was thus entitled to the relief as provided under the Limitation Act.

Accordingly, in view such observations the application under Order 22 R 4 CPC stands allowed on the order dated 19.08.2024 being set aside.

The legal heirs of the defendant no. 1 be added as substituted defendant no. 1 series.

The petitioner is granted leave to make the necessary amendment or note in the cause title of the plaint before the Trial Court within a period of 30 days from the date of this order with notice to the other

side and also take steps for service upon the substituted defendant no. 1 series.

Matter to appear before the Trial Court on 10th March, 2025.

Liberty is granted to the petitioner to communicate the server copy of the order to the trial Court.

CO 4021 of 2024 is disposed of.

Let a copy of this order be sent to the trial Court.

Photostat certified copy of this order, if applied for, being given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]