

OD-51

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/82/2024
WITH
CS/242/2011

SMT. DIPTI PAL
VS.
SMT. RENUKA MULLICK & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE OM NARAYAN RAI
Date : 16th April, 2025.

Appearance:
Mr. Varun Kothari, Adv.
Mr. Amit Chatterjee, Adv.
Mr. Jayanta Kr. Dhar, Adv.
...for the petitioner

Mr. Balarko Sen, Adv.
Mr. Souvik Ghosh, Adv.
...for the respondents

The Court : This appeal is directed against a judgment and order dated August 11, 2023, whereby a Learned Single Judge of this Court dismissed

GA/4/2023 and GA/5/2023 filed by the appellant, along with costs assessed at Rs.50,000/-.

It appears that the appellant and her mother filed the instant suit. On April 11, 2019, the suit was dismissed for default. The appellant's mother had passed away sometime in January, 2018. In 2022, the appellant filed an application being GA/3/2022 for restoration of the suit. On July 13, 2022, that application for restoration of the suit was dismissed for default.

The appellant then took out two applications being GA/4/2023 and GA/5/2023 for restoration of GA/3/2022 and for condonation of delay in filing the restoration application for restoration of GA/3/2022.

The said two applications being GA/4/2023 and GA/5/2023 were dismissed by the impugned order as indicated above.

From the impugned judgment and order we see that initially the Learned Judge was satisfied with the cause shown for the delay in filing GA/5/2023 and thus had allowed GA/4/2023 which was the condonation application. GA/5/2023 was also allowed by restoring GA/3/2022 to its original file and number.

However, it appears that thereafter it was pointed out that the plaintiff no.1 had died on January 9, 2018. The Learned Judge then passed the following order:

“After dictation of the order, the learned Counsel for the defendant Nos. 1A and 1B has brought to the notice of this Court that the plaintiff No.1, Parul Mullick died on 9th January, 2018 and even after the death of the plaintiff No.1, the plaintiff No.2 while filing the present application as well as application being number GA No.3 of 2022, made the deceased Parul Mullick as plaintiff No.1 and has not disclosed the death of the plaintiff No.1. Even the plaintiff No.2 has not prayed for recording the death or substitution of the legal heirs of the plaintiff no.1.

This Court finds that the plaintiff has suppressed the material facts before this Court and tried to obtain an order from this Court by suppressing the material fact by filing an application in the name of dead person. Accordingly, earlier order passed by this Court is recalled and the applications being GA No.5 of 2023 and GA No.4 of 2023 are dismissed with cost of Rs.50,000/-. The plaintiff No.2 is directed to pay the said amount to the West Bengal State Legal Services Authority within two weeks from date.”

Being aggrieved the surviving plaintiff has come up by way of this appeal.

Learned advocate for the appellant says that there was no suppression of any material fact before the Learned Single Judge. He takes us through the

records of GA/5/2023. We find that the factum of the death of the plaintiff no.1 was clearly mentioned in the application and death certificate of the deceased was also annexed to the application. Therefore, we see that there was no suppression of material facts.

Learned advocate for the respondents says that the appellant/plaintiff is guilty of gross delay. Despite death of her mother being the other plaintiff, in January, 2018, the appellant has taken no steps for recording the death of her mother. Relying on the judgment in the case of *Rajneesh Kumar and Another vs. Ved Prakash* reported in 2024 SCC OnLine SC 3380 learned advocate argued that in any and every case the litigant cannot make his lawyer a scapegoat and put the entire blame on him for the delay or laches, if any.

We are conscious that a litigant should not be allowed to put blame on his lawyer for any and every laches in conduct of the litigation. However, the decision cited by learned advocate for the respondents may not be of much relevance in the facts of the case since the Learned Single Judge dismissed the two concerned applications for suppression of material fact and not on any other ground.

As indicated above, there was no suppression of fact. Therefore, we are inclined to allow this appeal and do so. The order under appeal is set aside.

GA/4/ 2023 and GA/5/2023 filed by this appellant before the Learned Single Judge are restored to their original files and numbers.

The appeal being APO/82/2024 and the connected applications are accordingly disposed of.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)

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