

12.05.2026
(D/L-354)
Ct.-06
(NMD)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**C.O. 2398 of 2025
with
CAN 1 of 2026**

Rajashree Das
-Vs-
Soma Das & Anr.

Mr. Uday Sankar Chattopadhyay,
Mr. Debdipto Banerjee
... for the Petitioner
Mr. A.K.Chattterjee,
Mr. Kousik Karmakar
...for the Opposite Parties

1. This revisional application is directed against an order dated April 25, 2025 passed by the learned Judge, Bench XII, City Civil Court, Calcutta in Title Suit No. 1082 of 2022, by which the petitioner's application for addition of party under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908 has been rejected.
2. Title Suit No. 1082 of 2022 has been instituted by the petitioner against the opposite parties praying inter alia, for a decree of declaration, recovery of possession and permanent injunction. In the said suit, one Rathindra Nath Das has been arrayed as the proforma defendant no. 2. Upon discovering that the said Rathindra Nath Das who had been arrayed as the proforma defendant no. 2 had died, the

petitioner filed an application for addition of his heirs and legal representatives also as proforma defendants in the said suit. Such application has been turned down by the learned Trial Court.

3. Learned Advocate appearing for the petitioner submits that the said Rathindra Nath Das was only a proforma defendant and no relief had been claimed against him.
4. He further submits that the learned Trial Court has failed to appreciate that in the instant case, the proforma defendant had died prior to the institution of the suit and that being so the provisions of Order 22 Rule 4 of the Code would not apply and an application for addition of party was the only remedy available.
5. Learned Advocate for the petitioner relies on a judgment of the Hon'ble Supreme Court in the case of ***Pankajbhai Rameshbhai Zalavadiya vs. Jethabhai Kalabhai Zalavadiya through LRs. & Ors.*** reported at ***(2017) 9 SCC 700*** in support of his aforesaid submission.
6. Learned Advocate appearing for the opposite party no.1 fairly submits that the said opposite party has little to contest as it is for the plaintiff/petitioner to demonstrate her case.
7. Having heard the learned Advocates appearing for the respective parties and having considered

material on record this court is of the view that the learned Trial Court has erred in rejecting the petitioner's application for addition of party under Order I Rule 10(2) of the Code of Civil Procedure, 1908 without adjudicating the point as whether the presence of the person would have assisted the Court in adjudicating the issues in the suit properly or not.

8. There is force in the submission of the learned Advocate for the petitioner that since the said Rathindra Nath Das who had been arrayed as the proforma defendant no. 2 had died prior to the institution of the suit itself, therefore the provisions pertaining to substitution under Order 22 of the Code would not apply. The judgment of the Hon'ble Supreme Court in the case of **Pankajbhai Rameshbhai Zalavadiya** (supra) is a clear authority on such point. The learned Trial Court was therefore not justified in rejecting the petitioner's application for addition of party observing *inter alia* that the petitioner had not taken any step for substitution and had filed a suit against a dead person.
9. On such score alone, the order impugned is set aside. The learned Trial Court shall consider the petitioner's application under Order I Rule 10(2) of the Code afresh on merits and pass

appropriate orders in accordance with law. The learned Trial Court is requested to dispose of the application expeditiously.

10. It is clarified that the order impugned is interfered with only to the extent of the rejection of the petitioner's prayer for addition of party and the other portion of the order pertaining to extension of the ad interim order of injunction is not touched.
11. C.O. 2398 of 2025 stands disposed of with above observation shall be no order as to costs.
12. CAN 1 of 2026 has been filed for extension of interim order. Since the revisional application has itself been disposed of. CAN 1 of 2026 has become infructuous and the same also stands disposed of accordingly.
13. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)