

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-132 of 2011, Registration No.-148/14³

Waseem Akhtar vs. Md. Zohair Alam & Others

11-04-2022

Wakaltan hazari have been filed on behalf of the plaintiff and defendants. On perusal of the case record, it appears to the Court that today this case is fixed for order on petition dated-22.02.2021 filed on behalf of the plaintiff U/O-XXII, Rule-4 & u/s-151 of the Civil Procedure Code, 1908 herein after referred as the C.P.C. Copy of the same is attached with case record. In this petition, it has been submitted that Defendant No.-10 namely Md. Shamim Akhtar, s/o-Babu Mohammed Salman died on 04.11.2020 leaving behind him his three sons namely Altaf Haider, Shativ Haider & Asif Aadil and his widow wife namely Bibi Monajara Khatun. The above noted persons are the legal representatives of the deceased Defendant No.-10 and are necessary to be brought on record. Further submission of the plaintiff is that wife of deceased defendant no.-10 namely Bibi Monajara Khatun is already on record as defendant no.-6 and his youngest son Aasif Aadil is a minor. It has been further submitted that the substitution petition could not be filed within time due to Covid-19, therefore and there was no deliberate laches on the part of plaintiff. Therefore, it is prayed that name of Defendant No.-10 be deleted and substitute his legal heirs in place of him in the plaint in the interest of justice by condoning the delay in filling the petition.

No rejoinder of the petition dated-22.02.2021 has been filed on behalf of the defendants.

Heard the learned counsel of the plaintiff, but on repeated call no body turned up on behalf of the defendants for hearing. On hearing and perusal of case record, it appears to the Court that a petition U/O-XXII, Rule-4 & u/s-151 of the supported with an affidavit has been filed on behalf of the plaintiff. It also appears that Defendant No.-10 namely Md. Shamim Akhtar died on 04.11.2020 leaving behind him his Altaf Haider, Shativ Haider & Asif Aadil and his widow wife namely Bibi Monajara Khatun. It further appears that Bibi Monajara Khatun, wife of the deceased defendant no.-10 is already on record as defendant no.-6.

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continued..... It further appears that above named persons whose name have been mentioned in the foot of the petition dated-21.02.2021 are the legal heirs/ representatives of the deceased Defendant no.-10 and they are the necessary parties to this suit. Though, petition is not filed within time as stipulated in the Article -120 of the Limitation Act,yet by seeing the prevailing circumstances due to Global pandemic Covid-19 during those period,delay in filling the same is condoned for the ends of justice.

Considering the facts and circumstances as discussed above,the Court is of opinion that the suit is not abated due to death of deceased Defendant no.-10 namely Md. Shamim Akhtar and right to sue survives as his legal heirs are aliveand her wife is already on record as defendant no-6. Therefore, the petitions dated-22.02.2021 filed on behalf of the plaintiff is allowed by condoning the delay in filling the same in the interest of justice. Learned Counsel of the plaintiffs is directed to struck off the names of deceased Defendant No.-10 from array of the defendants and substitute the name of his legal heirs on the title page of the plaint as given on the foot of the petition,dated-22.02.2021 within twenty days from today. Thus, petitions dated- 22.02.2021 filed on behalf of the plaintiff is disposed of as accordingly.

Fixing on for deletion of the name of deceased defendant no.-10 and substitution of his legal heirs/ representatives in place of him.

Dictated


Sub Judge-II
11.04.22