

T.S. 600 of 2022 (R)
CNR No: WB.JP-04000709- 2022
JO Code: WB 01442

Order no. 17 dated 22.04.2025

Today is fixed for ex parte hearing of the suit.

Both sides have filed their haziras.

The plaintiff files a petition for extension of the ad interim of injunction.

The Learned Advocate for the plaintiff moves the petition under Order 22 Rule 4 read with Section 151 of C.P.C.

The Learned Advocate for the defendant submits that she he has no objection if the instant petition is allowed, and the legal representatives of the defendant no. 4 is brought on record.

Heard. Perused. Considered. It is noted that the defendant no. 4 died on 10.05.2023, and the plaintiff claims that he came to know about the date of death on 28.07.2023 when the defendants filed the petition for substitution in the pending appeal. The instant petition has therefore, been filed after expiry of ninety days. The instant petition has been filed only on 17.08.2023, which is after 99 days. In its recent judgment, in the case of **Om Prakash Gupta Alias Lalloowa (Now Deceased) & Ors. Versus Satish Chandra (Now Deceased), 2025 INSC 183** the Hon'ble Supreme Court has explained the procedure under Order 22 Rule 4 as follows:

“The proper sequence to be followed, therefore, is an application for substitution within 90 days of death and if not filed, to file an application for setting aside the abatement within 60 days and if that too is not filed, to file the requisite applications for substitution and setting aside the abatement with an accompanying application for condonation of delay in filing the latter application, i.e., the application for setting aside the abatement. Once the court is satisfied that sufficient cause prevented the plaintiff/appellant from applying for setting aside the abatement within the period of limitation and orders accordingly, comes the question of setting the abatement. That happens as a matter of course and following the order for substitution of the deceased defendant/respondent, the suit/appeal regains its earlier position and would proceed for a trial/hearing on merits. Be that as it may.”

Therefore, the suit has already abated as against the defendant no. 4 on the expiry of ninety days, from the date of death by operation of law, and the no objection from the defendants cannot be construed to lead to the setting aside of abatement.

Fix **05.08.2025** for setting aside of abatement as against defendant 4.

Typed/Corr. by me

Civil Judge, (Jr. Div.)
Jalpaiguri

Civil Judge, (Jr. Div.)
Jalpaiguri