

TA- 49/19

Order No. 8

07.01.2021

Today is fixed for hearing of the petition u/o 22 Rule 3 of C.P.C. read with Section 151 C.P.C.

Both the parties file hazira through their respective Ld. Advocate.

Now, the petition dated 07.03.2020 is being taken up for hearing.

Heard the Ld. Lawyer for the appellant who submits that the sole appellant is no more alive. He died on 04.01.2020 leaving behind the petitioners as his legal heirs and representatives. He further submits that the present petitioners have filed the application within the prescribed period, so there is no bar to make them as necessary parties to this proceeding (appeal). Therefore, he prays for passing necessary order to substitute the petitioners named in the petition as necessary parties (appellants) in the present proceeding, otherwise, they will suffer irreparable loss and injury.

On the other hand, Ld. Lawyer for the respondents raised no objection.

Perused the case record and death certificate. On perusal, it appears that the appellant namely, Ramdeo Yadav died on 04.01.2020. On the other hand, the legal heirs and representatives of deceased preferred the application u/o 22 Rule 3 C.P.C. read with Sec. 151 C.P.C. within the prescribed period. I do not find any reason to disbelieve the death certificate issued by the Registrar Birth & Death, Deoria Sadar, Uttar Pradesh.

Considering all, petition u/o 22 Rule 3 of C.P.C. read with Sec. 151 C.P.C. stands allowed.

Let Smt Bulaki Debi, Sri Ramesh Yadav, Sri Dinesh Yadav, Sri Bablu Yadav, Sri Ajay Yadav and Smt Bindu Yadav who are the wife, sons and daughter of the deceased appellant, be substituted as appellants in lieu of deceased Ramdeo Yadav.

Accordingly, petition u/o 22 Rule 3 of C.P.C. read with Sec. 151 C.P.C. is thus disposed of.

To 24.02.2021 for hearing of the petition u/s 5 of Limitation Act.

Both the parties are directed to come ready on the date fixed.

D/C

ADJ-FTC, Serampore.

ADJ-FTC, Serampore.

TA- 49/2019
CIS No. TA/49/2019
CNR No. WBHG05-001436-2019
J.O. Code: WB00672

Order No. 11
31.03.2021

Today is fixed for passing necessary order.

Appellant files hazira through his Ld. Advocate.

Now, the case record is being taken up for passing order in respect of the petition u/s 5 of Limitation Act.

Heard both sides.

In the course of hearing, Ld. Counsel for the appellants submits that the appellant Ramdeo Yadav, since deceased was suffered cerebral attack in the year 2010 and since then, he was in critical condition as he was totally parallelized. Therefore, the delay was caused in presenting the present appeal and as such, he has prayed for condonation of delay. In support of his case, Ld. Counsel also filed medical papers of deceased appellant.

On the other hand, Ld. Counsel for the respondent raised strong objection. He has submitted that there was delay of more than 274 days and it was for the appellants to describe the delay day to day, but did not do so. The documents produced by the appellants do not substantiate the submission of Ld. Counsel as well as the contents of the petition u/s 5 of Limitation Act. Therefore, he prays for rejecting the said application.

Perused the case record. It is true that there is delay of more than 270 days. From the medical documents, it appears that the deceased defendant was suffered cerebral attack in the year 2010 and he was bed-ridden as he suffered paralysis. Further, I am of the view that a chance should be given to the appellants to plead the case.

Considering all, the petition u/s 5 of Limitation act stands allowed with cost of Rs. 2,000/- (C.P.).

Accordingly, the appeal preferred against the judgement dated 05.02.2019 and the decree which was drawn up on the basis of said judgement passed by the Ld. Civil Judge (Jr. Division), 4th Court Serampore, in connection with T.S. No. 215 of 2012 is admitted.

To 17.06.2021 for hearing of appeal. Call for LCR.

D/C

ADJ-FTC, Serampore.

ADJ-FTC, Serampore.