

**Misc. Appeal – 24/2017**  
**CIS - 147/15**

J.O. Code : WB01302

**Order No.52 dt. 18.3.25**

Today is fixed for passing order.

Both sides file hazira.

The record is now taken up for passing order upon the hearing of the petition dated 31.01.23 filed by the appellant under Order 11 Rule 1 read with sec. 151 of the CPC and the two petitions dated 22.12.15 filed by the respondents.

Ld Advocate for the appellant while moving the said petition had submitted that the appellant is not aware about the date of death of the respondent No. 3 Archana Dutta and the respondent No.1 has failed to intimate the same in his petition filed in this case on 22.12.15 and has also failed to intimate as to who are the heirs of the said deceased. He submitted that the appellant has no connection with the deceased respondent but the respondent No. 1 had good relations with her and as such the date of death as well as the name of her heirs is known to the respondent No.1. He also submitted that the respondent No.1 should answer his two interrogatories given in his petition viz the date of death of the deceased and the names of her heirs, which is necessary at this stage for enabling the appellant to take steps for the substitution of the deceased in this appeal. He prayed for allowing the said petition.

Ld Advocate for the respondents submitted that the respondents are not duty bound to answer the said interrogatories and that it was the duty of the appellant to substitute the heirs of the deceased in the present appeal after they have intimated him regarding the death of the deceased respondent No. 3. He also submitted that the appellant is dragging this issue for long intentionally without proceeding into the merits of the present appeal and prayed for dismissal of the said petition.

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Ld Advocate for the respondents while moving the two petitions dated 22.12.15 filed by the respondent No. 1 submitted that he had filed a petition on 22.12.15 and had intimated therein that the respondent No. 3 had died 4/5 years ago and prayed for passing of necessary order thereupon and had also filed another petition on the same day praying for dismissing the instant appeal as it was not maintainable as the Misc. case filed under Order 9 Rule 9 of the CPC was itself not maintainable. He prayed for passing of necessary order upon the said petitions and thereby disposing of the same.

Ld Advocate for the appellant raised objection against the said petitions and submitted that as the date of death of the respondent No. 3 has not been mentioned in the first petition, the said petition needs to be dismissed and that the second petition also needs to be dismissed as maintainability point cannot be raised at this stage when the Misc case has already been adjudicated and appeal thereupon filed by the appellant herein.

Heard both the sides. Perused the three petitions and record. Considered.

So far as the two petitions dated 22.12.15 is concerned, the first petition just intimates the court about the death of the respondent No. 3 without mentioning therein the date of death of the said respondent and more importantly, the said petition is bereft of the mandatory death certificate of the deceased. As the death certificate has not been filed by the respondent No. 1, the said petition cannot be considered and no order thereupon can be passed by this court until death certificate is filed. As such the said petition is now dismissed and thus disposed of.

The other petition mentioning that the TCR need not be called as the instant appeal is not maintainable is not proper as the instant appeal has already been admitted by the filing court. The maintainability of the misc case was never agitated before the ld trial court during the contest hearing of the said case by the respondent/O.P. At this stage in this appeal, the said maintainability of the Order 9 Rule 9 petition which germinated the said misc case cannot be questioned. The said matter would be looked into while disposing of the instant appeal on merits after hearing both the sides after calling for the TCR. Hence the said petition filed by the respondent No. 1 is also considered and dismissed and thus disposed of.

As regards the prayer of the appellant dated 31.01.23, the said petition is also liable to be rejected as the appellant has filed the prayer of serving interrogatories upon the respondent at a huge belated stage of more than seven years after he got the intimation of the death of the respondent No. 3 by the petition of the respondent No. 1 dated 22.12.15. As the appellant has failed to show due diligence in this matter, which if otherwise filed within the limitation period after getting the death information would have been considered, the said petition for serving upon the said interrogatories to the respondents is now considered and dismissed and thus

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disposed of. As the appellant has admitted to the death of the said respondent No. 3 and has not contested the same and has also failed to take steps for her substitution in this appeal for more than eight years, the instant appeal stands abated against respondent No. 3.

**Call for the TCR from the ld trial court at once.**

Both parties to come ready for the hearing of the instant appeal on the next date.

To 10.07.2025 for hearing of the appeal, subject to receipt of TCR.

Dictated & Corrected by

Sd/-

Addl. District Judge, 2<sup>nd</sup> Court  
Serampore

Sd/-

Addl. District Judge, 2<sup>nd</sup> Court  
Serampore