

L.A. Misc Case No.994 of 2014

Order No.34, dt. 08.07.2022:

Parties file hazira through their Ld. Advocates.

The record is taken up for hearing of two petitions dt.14.06.2018 and dt.22.04.2022.

It is stated in the petition dt.14.06.2018 that the awardee/ petitioner, namely, Mira Mukherjee died on 19.07.2016 leaving behind the present petitioners as her legal heirs and successors.

Another petition dt.22.04.2022 stated that the awardee/ petitioner, namely, Goutam Mukherjee died on 13.02.2019 leaving behind the present petitioners as his legal heirs and successors.

So, the petitioners have filed these two petitions praying for their addition.

Petitioners have filed xerox copies of death certificates of Mira Mukherjee, Tapas Mukherjee and Gautam Mukherjee. Let those be kept with the record.

Ld. G.P., Howrah and Ld. Advocate for petitioners are present.

Perused the petition and the materials on record.

It appears that awardee/ petitioners Mira Mukherjee, Tapas Mukherjee and Gautam Mukherjee expired. So being legal heirs, petitioners are required to be added as parties in this case.

This type of petition should be under the provisions laid down under Order 22 of the C.P.C which deals with substitution in case of death of a party. Order 1 Rule 10 of the C.P.C deals with the matter relating to suit in the name of wrong person wherein it has been laid down that:-

1. where a proceedings has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the proceedings, if satisfied that the proceedings has been instituted through a bona fide mistake, and that it is necessary for the determination of real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks fit;
2. The Court may at any stage of the proceeding, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of the party improperly joined, whether as plaintiff or defendant, had struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually, completely to adjudicate upon and settle all the questions involved in the suit, be added.

The rest three sub-rules deal with the matter relating to disable person, and defendant.

Now, the question is whether the legal heirs of a plaintiff may be allowed to be a party instead of substitution under the provisions of Order 22 of the C.P.C.

A casual and comparative reading of both these Orders indicating the broadness of Order 1 Rule 10 of the C.P.C. as both to the sub-rule(1) and (2)

empowers the Court to consider striking out or adding any person at any stage of the proceedings for effective and complete adjudication and settlement of the questions involved in the proceedings because the predecessors of the petitioners were awardee/ petitioner, in this case, non-substitution of the petitioners in the proceedings is nothing but a legal ignorance which cannot stand on the way of substantial justice which is the very principle of a legal system. I, therefore, think it reasonable not to be hyper-technical when there is nothing to be prejudiced by the opposite party that is the adversary in the proceedings and only allowing the petition can ensure the substantial justice and a complete and effective adjudication and settlement of all the questions involved in this case.

Hence, it is,

ORDERED

that the two applications u/o-1 rule-10(2) of C.P.C. dt. 14.06.2018 and another application dt.22.04.2022 are hereby allowed on consent without cost.

Let the persons described in the schedule be substituted in place of awardee/ petitioners Mira Mukherjee, Tapas Mukherjee and Gautam Mukherjee.

Let the name of the persons described in the schedule be inserted in the claim application as well as in the relevant register.

Fix 12.09.2022 for amended application.

Judge, L.A Tribunal, Howrah