

Misc Case - 172/16
CIS Registration No. - **172/16**
J.O. - Code – WB 653

Order No. 77, Dated 07.02.23

Plaintiff files hazira. O.P. is absent without taking any steps.

Today is fixed for hearing of the petition U/O 22 Rule 9 CPC filed by the petitioner. The same is taken up for hearing. One Goutam Mukherjee being constituted attorney of the petitioners tendered the examination in chief filed on 04.02.23. He is further examination in chief in full as Pw.-1 and discharged. No more witnesses are present today. On the prayer of the petitioner, evidence is closed. Heard argument in full. The record is taken up for order.

By filing the petition U/O 22 Rule 9 CPC, the petitioner prayed for setting aside the abatement of this case on the grounds inter alia that after death of the petitioner no.2 Santana Banerjee on 25.04.17 her legal heirs have not been brought on record within 90 days from the date of death of the deceased because the constituted attorney of the petitioner Sri Goutam Mukherjee was not aware about the same who was very busy in the treatment of his seriously ill wife. It is further contended that due to ignorance of law even rest of the petitioners did not inform the news of death of the deceased to the constituted attorney and the same resulted in abatement of the case as against the petitioner Santana Banerjee.

In course of hearing, the constituted attorney examined himself as Pw.-1 and narrated all the relevant facts as disclosed in the petition. He categorically stated that he was not aware about death of Santana Banerjee till the morning of 23.07.17 because his wife was seriously ill and he was busy in her treatment. He further stated that after getting information of death of Santana Banerjee he could not intimate the same in Court through his Advocate due to his ignorance of Law which is unintentional and prayed to condone the same.

Having heard Ld. Lawyer for the petitioner and considering the materials on record, it appears to me that the case as against the petitioner no.2 got abated for want of substitution of legal heirs of the aforesaid petitioner in due time. It also appears to me that the constituted attorney of the petitioners was not aware about the aforesaid death due to his busy schedule for the treatment of his ailing wife and rest of the petitioners as well as legal heirs of the deceased could not inform the same due to ignorance. It further appears to me that the constituted attorney of the petitioners categorically stated the reasons of delay in filing the instant petition during his examination as Pw.-1 and there is nothing on record to disbelieve the same.

Considering the above noted facts and circumstances, it appears to the Court that the petitioner was prevented by sufficient cause from continuing the case and this Court is of the view that the abatement of the case as against petitioner no.2 should be set aside. The petition filed to that effect accordingly stands allowed and disposed of. The abatement as against petitioner no.2 stands set aside.

To **29.05.23** for hearing of the petition dated 08.08.17 U/O 22 Rule 3 CPC.

D/C by me.

A.D.J., 1st Court.

Addl. District Judge,
1st Court, Barasat.