

Misc Case 76 of 2023.

[ u/o- 22 Rule 9 of C.P Code ]

[ Arising out of Ejectment suit 434 of 2019 ]

[ CNR WBPS01 000269 2023 ]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-28.

22-09-2023.

Today is fixed for hearing on the point of admission and filing General power of attorney by the petitioners.

Petitioner files hazira. Ld. Advocate for the petitioner is found present.

Ld. Advocate for the petitioners prayed for admission of the Misc Case.

Heard submission from the Ld. Advocate for the petitioners. Perused the materials on record. Considered.

Now, it is well settled principle of law that where a suit or appeal has already abated, an application under Order 22 Rule 9 of C.P Code has to be filed within sixty days from the date of abatement for an order to set aside the abatement- vide Article 121 of Limitation Act. The abatement is automatic after 90 days prescribed by Article 120 have expired and unless the abatement is set aside on an application within 60 days or a period further extends under Section 5 of the Limitation Act.

Here the application u/o-22 Rule 9 of C.P Code has been filed by the petitioners on 16-05-2023 whereas the death of plaintiff no-1 occurred on 28-01-2023 as it appears from Order dated 10-05-2023 which means that although no formal order of abatement has been passed, the suit abated automatically on the 90<sup>th</sup> day after the death of plaintiff no-1, ie on 28-04-2023. The instant Misc Case has been filed on 16-05-2023.

Therefore, the Misc Case prima facie appears to be admissible so far limitation is concerned.

p.t.o....

However, record reveals that till date no General power of attorney has been filed by the petitioners in compliance of the Order dated 16-05-2023 passed by this Court.

Therefore, petitioners are directed to file the General Power of Attorney as per their undertaking made in the petition dated 16-05-2023 as well as in compliance of Order dated 16-05-2023. Thereafter, the matter shall be heard on the point of admission.

Accordingly, fix. ( 03-01-2024) for hearing on the point of admission and filing of General power of attorney by the petitioners in terms of Order date 16-05-2023.

It may be mentioned here that prior to passing of any order of abatement in the original Ejectment suit, the application u/o-22 Rule 9 of C.P.C has been registered as a Misc Case by the department concerned. Therefore, Dealing clerk of the concerned department is hereby cautioned and directed to remain vigilant in future and not to repeat such mistakes.

Dictated & corrected

by me :-

Chief Judge

Chief Judge.

J.O .Code:- WB 01244.