

Misc Case 77 of 2023.

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

[Arising out of Ejectment suit 435 of 2019]

[CNR WBPS01 000270 2023]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-29.

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 90th 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.**

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.