

MISC CASE NO. 159 of 2022
C.N.R No. WBPS01-000701-2022

IN THE 4TH BENCH, PRESIDENCY SMALL CAUSE COURT
PRESENT: SMT. ARCHITA SEN, JUDGE BENCH-4, PRESIDENCY
SMALL CAUSE COURT.

ORDER NO- 115
DATED 10-05-2024:

Today is fixed for hearing of the petition dated 15.03.2024 under Order XXII Rule 4 of C.P.C. Petitioner files attendance through her Ld. Advocate.

The record is taken up for hearing of the petition dated 15.03.2024 under Order XXII Rule 4 of the C.P.C filed by the petitioner.

Heard. Perused the record.

Considered.

Perusal of the case record reveals that the petition contemplates the substitution of the name of the deceased sole opposite party who expired on 13.01.2023, by the legal heirs as named in the petition. It is submitted by the Ld. Advocate for the petitioner that admittedly the instant petition has been filed beyond the period of limitation but the prayer for substitution can be allowed as the petitioner did not know about the death of the opposite party as the suit premises is a shop room and it remains under lock and key in most of the time. The death of the opposite party was intimated before the Court when the petitioner attempted to serve the summons on the opposite party in substituted manner. The instant application has been filed within three months from the date of knowledge of the petitioner. So the prayer of the petitioner may be allowed.

There is no doubt that the instant petition has been filed after the lapse of the period prescribed by the Statute for substitution. The date of death of the opposite party is 13.01.2023 and the instant petition has been filed on 15.03.2024. Going by the strict interpretation of the provision of Order XXII Rule 4 of C.P.C the case has automatically abated due to not taking of proper steps for substitution and the actual process provided by the statute is that the petitioner has to file petition under Order XXII Rule 9 of C.P.C for setting aside the abatement. But in the instant case it transpires from the record that the petitioner was not aware about the death of the deceased opposite party. Attempts were made by the petitioner to serve the summons of the case upon the opposite party in ordinary course. But all the attempts were failed. So the service was effected by publication of the summons in the newspaper. The date on which the petitioner filed the newspaper before the Court after such publication, an intimation was given in writing by a Ld. Advocate that the opposite party has expired. So the death of the opposite party came to the knowledge of the petitioner on 15.01.2024. On the perusal of the plaint it further appears that the suit premises is a shop room where the opposite party used to run business. So it is not possible for the petitioner to know whether the tenant has expired or not or who are the legal heirs of the commercial tenant. Had it been a case that the tenancy was for residential purpose and the petitioner and the opposite party along with her family reside at the same building then the result would have been otherwise. Considering the peculiarity of the case, this Court thinks that it would not be proper to non suit the petitioner against opposite party for some technical grounds. Apart from that the Hon'ble Supreme Court in **Banwari Lal (Dead) by legal representatives and another Vs Balbir Singh, (2016)2 WBLR (SC)24**, was pleased to observe that the provision of Order XXII C.P.C are not penal in nature. It is a rule of procedure and substantial rights of the parties can not be defeated by taking pedantic approach in observing strict adherence to the procedural aspects of law.

For that the petition is required to be allowed.

For that, it is

ORDERED

That let the name of the opposite party, Parbati Jaiswal be substituted by the names of her legal heirs as named in the petition dated 15.03.2024 by making necessary corrections in the cause title of the main application.

Let the petition dated 15.03.2024 be treated as a part of the petition under Order IX Rule 9 of the C.P.C.

D.A. to do necessary corrections and insertions.

Note in the relevant register.

The petitioner is directed to file amended cause title of the main application, as it would stand after the substitution, within 30 days hereof, failing which necessary orders will be passed. The petitioner is also directed to put requisite for serving of summons on the newly substituted opposite parties.

The petition under order XXII Rule-4 CPC dated 15.03.2024 is thus disposed of without contest and costs.

To 10.07.2024 for S/R in respect of substituted opposite parties. Steps by the petitioner in terms with the order in the mean time.

Typed, Corrected and Printed by me.

Judge, Bench-4
Presidency Small Cause Court.
J.O Code WB01174

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