

T.S. 34/2016
(CIS-90/17)

Order no.40 dated 09.03.2022.

Today has been fixed for further hearing and order.

Ld. Advocate for the plaintiff is present by filing hazira.

Ld. Advocate for the plaintiff “not pressed” the earlier filed substitution petition.

Hence the said petition is rejected for being “not pressed”.

Ld. Advocate for the plaintiff filed another petition on behalf of the plaintiff and submitted for exempting the plaintiff from substituting the legal representative of the deceased defendant no.1 on the ground that the suit is already proceeding ex-parte against him.

Heard submission of the Ld. Advocate.

Before proceeding further it is pertinent to consider the provision under Order 22 Rule 4 which says that

“22 (4)- The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.”

In the instant matter the suit is already proceeding ex-parte against Defendant no.1 and other defendants and the same is evident from the Order no.4 dated 27/01/2017.

The service of summon upon the Defendant no.1 is also considered to be a satisfactory service as per the report of the prosecution. Hence considering above there appears to be no impediment in allowing the petition filed on behalf of the plaintiff.

The petition is hereby allowed.

The plaintiff is hereby exempted from substituting the legal representative of deceased defendant no.1.

To **17/05/2022** for argument.

D/C by me;

Civil Judge (Jr. Divn.)
Garhbeta
J.O. Code: WB01413