

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.1570 of 2019

Eastern Coalfields Limited Petitioner

Versus

Valley Refractories Limited and Ors. Respondents

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Rajesh Lala, Advocate
For the Respondents :

04/25.07.2019 It is a case where the order dated 13.08.2018 passed by the trial Court in Title Suit No.169 of 2006 has been assailed, by which while dealing with two petitions, two orders have been passed.

First petition was dated 25.05.2018, wherein the prayer was made for substituting the defendant no.2 through the subsequent Director but the same has been rejected taking the ground that two suits being one Title Suit No.169 of 2006 and another Title Suit No.140 of 2007 have been filed against the same defendant and in one of the suit being Title Suit No.140 of 2007, an information about the death of the defendant no.2 namely Basudeo Agarwall has been communicated by filing petition under Order XXII Rule 4 read with Section 151 of the C.P.C. and therefore, there is no reason again to provide an opportunity of having communication about the death of the defendant no.2 namely Basudo Agarwall, since the same has already been communicated to the petitioner/plaintiff by making an appropriate application in Title Suit No.140 of 2007.

According to Mr. Rajesh Lala, learned counsel for the petitioner, the requirements as stipulated under the provision of Order XXII Rule 10 (A) is to be looked independently and the said application is required to be filed in each and every case individually and if two suits are going on merely by filing an application in one suit, which can prejudice to fulfill the requirement of law, therefore, the trial Court has committed gross illegality in passing the order dated 13.08.2018, hence it is not sustainable.

Subsequent to the same, a substitution petition has been filed after knowing about the death of the defendant no.2 but the same has also been rejected on the ground that the said petition was not supported with an affidavit but according to the learned counsel for the petitioner, the

said finding which contrary to the record, since the said petition was filed along with an affidavit as would appear from page no.58 to the brief.

In that view of the matter, let notice be issued upon the respondents, for which, requisites under registered as well as ordinary process must be filed within a week.

List this case on 18.09.2019.

Ad-Interim:-

Mr. Rajesh Lala, learned counsel for the petitioner, has prayed before this Court for passing ad-interim order for stay of further proceeding pertaining to order dated 13.08.2018 (annexure-9) passed in Title Suit No.169 of 2006 by the Civil Judge, (Junior Division)-II at Dhanbad, since according to him, the defendant has not been substituted and if the trial would be allowed to proceed, the prejudice would be caused to the petitioner/plaintiff.

His further submission is that since the substitution petition has been rejected purely on frivolous ground, therefore, on merit also the petitioner has got *prima-facie* case.

This Court, after hearing the learned counsel for the petitioner and looking to the submission as has been recorded hereinabove, is of the view that the petitioner has got *prima-facie* case in his favour and if the trial would be allowed to proceed, it will cause irreparable loss to the petitioner as also balance of convenience lies in favour of the petitioner, since in absence of and without any fault on the part of the petitioner, if the trial would be allowed to proceed, the petitioner would not be compensated, further it will lead to multiplicity of proceeding, therefore, this Court is of view that the prayer sought for by the learned counsel for the petitioner by way of ad-interim relief, is required to be passed.

In view thereof, further proceeding pertaining to order dated 13.08.2018 (annexure-9) passed in Title Suit No.169 of 2006 by the Civil Judge, (Junior Division)-II at Dhanbad, be kept in abeyance till the next date.

(Sujit Narayan Prasad, J.)