

**IN THE HIGH COURT AT CALCUTTA  
(Ordinary Original Civil Jurisdiction)  
ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**IA No: GA 2 of 2022**

**In CS 212 of 2019**

**Ashok Ramniklal Mansata**

**Versus**

**Chandrakant Girdhardas Mansata & Ors.**

Mr. Rupak Ghosh

Mr. Ayan Dutta

Mr. Abhijit Sarkar

Mr. Abhik Chitta Kundu

... For the plaintiff/petitioner.

Mr. Debasish Kundu, Sr. Adv.

M. Debnath Ghosh

Mr. A. Kundu

Mr. Aniket Chaudhury

Mr. A. Kundu

Mr. Biswaroop Mukherjee

... For the defendants/respondents.

Hearing Concluded On : 10.08.2023

Judgment on : 12.09.2023

**Krishna Rao, J.:**

1. The plaintiff has filed the instant application being G.A No. 2 of 2022 for the substitution of the legal heirs deceased defendant no.1. The plaintiff has filed the suit being C.S No. 212 of 2019 for partition of the immovable property situated at 10B, Middleton Street, Kolkata. During the pendency of the suit, the defendant no.1 expired intestate on 22<sup>nd</sup> December, 2020 leaving behind his wife and daughter.
2. As per the contention of the plaintiff, the plaintiff came to know about the death the defendant no.1 sometimes in the 1<sup>st</sup> Week of April' 2021 from the defendant no. 2. It is further contended that the defendants have also filed another suit being C.S No. 208 of 2018 against the plaintiff. The deceased defendant no.1 was the plaintiff no. 2 in the said suit. The plaintiffs of C.S No. 208 of 2018 have filed an application being G.A No. 5 of 2021 for substitution of the legal heirs of the plaintiff no. 2 and the said application was served to the plaintiff (defendant in C.S 208 of 2018) on 15<sup>th</sup> November, 2021. The application filed by the plaintiffs in C.S No. 208 of 2018 was allowed and the legal heirs of the plaintiff no. 2 were substituted.
3. Learned Advocate representing the plaintiff submitted that the defendant no. 1 died leaving behind his wife and daughter but due to delay in filing the present application, the suit against the defendant no. 1 is abated. He further submitted that due to pandemic Covid-19, he was not in a position to visit the advocate's chamber and to give

proper instructions for taking appropriate steps after the death of the defendant no. 1. He further submitted that the plaintiff is entitled to get the benefits of several orders passed by this Hon'ble Court as well as the Hon'ble Supreme Court for condoning the delay in filing the present application.

4. Learned Advocate for the plaintiff submitted that the suit was referred for the mediation and the plaintiff was of the opinion that the matter would be settled in the mediation. He has also submitted that the wife of the plaintiff was also diagnosed with cancer and the entire attention was diverted towards his wife's health condition during the said period.
5. Learned Advocate for the defendants submitted that the application filed by the plaintiff is liable to be dismissed as the plaintiff has suppressed the material facts and has made a false statement on oath. He submitted that there is a delay of 644 days in filing the present application and the plaintiff has not explained the said delay.
6. Learned Advocate for the defendants submitted that as per the case made out by the plaintiff, the plaintiff came to know about the death of the defendant no. 1 sometimes in the 1<sup>st</sup> week of April' 2021 whereas the facts remain that on the date of the death of the defendant no.1, the plaintiff was personally present at Indore for cremation and subsequently for the immersion of the ashes in the river Narmada at Maheshwar.

- 7.** Learned Advocate for the defendants submitted that the plaintiff has admitted that the plaintiff has received a copy of G.A No. 5 of 2021 in C.S No. 208 of 2018 and the said application was allowed by this Court by substituting the legal heirs of the plaintiff no. 2 by an order dated 24<sup>th</sup> November, 2021 but the plaintiff herein failed to take steps for substitution of the defendant no. 1 till 27<sup>th</sup> September, 2022.
- 8.** Admittedly, the defendant no.1 in C.S No. 212 of 2019 died on 22<sup>nd</sup> December, 2020. It is also admitted that there are two suits pending before this Court between the two parties. The deceased defendant no.1 in the present case was the plaintiff no. 2 in the earlier suit being C.S No. 208 of 2018. The defendants have taken a specifically averred that on the date of death of the defendant no. 1, the plaintiff was personally present at Indore for the cremation and subsequently, for the immersion of the ashes in the river Narmada at Maheshwar. The said statement was emphatically denied by the plaintiff in his reply to the affidavit filed by the defendants. The defendants except the averments have not produced any supported documents with the affidavit and thus it is not possible for this Court to come to the definite finding that the plaintiff was present at Indore on the date of death of the defendant no.1 and had performed the cremation and immersion of ashes at the river Narmada.
- 9.** Admittedly, there is a delay of 644 days in filing the present application. The plaintiff has taken the ground of Covid pandemic-19, health issues of his wife and the benefit of the judgment passed by the

Hon'ble Supreme Court for condoning the delay during pandemic Covid-19 and the matter was referred to mediation. The matter was referred for mediation by an order dated 7<sup>th</sup> January, 2020. By a report dated 21<sup>st</sup> March, 2022, the mediator has submitted his failure report and thus the ground of mediation will not support the contention of the plaintiff.

- 10.** As regard to the pandemic Covid-19, the plaintiff had appeared in the C.S No. 208 of 2018 in which the plaintiffs of the said suit have filed an application for substitution of the legal heirs of the plaintiff no. 2 and the same was allowed with the consent of the plaintiff herein on 24<sup>th</sup> November, 2021. As per the report of the mediator also the plaintiff had appeared through virtual mode and thus the plaintiff all along appearing in the proceedings of C.S No. 208 of 2018.
- 11.** As regard the order passed by the Hon'ble Supreme Court for condoning the delay during the covid period, specifically the order dated 10<sup>th</sup> January, 2022, if this Court considers the judgment, in that event also the plaintiff will not be entitled to get an order for condonation of delay as the plaintiff has filed the present application after the time period prescribed by the Hon'ble Supreme Court.
- 12.** Considering the entire facts and circumstances, this Court finds that the plaintiff has not properly explained the delay for filing the present application and thus the application filed by the plaintiff is liable to be dismissed.

**13.** Accordingly, **G.A No. 2 of 2022** is thus **dismissed**.

**(Krishna Rao, J.)**