

(2018) 12 CAL CK 0080
In the Calcutta High Court

Case No : Civil Suit No. 264 Of 2012, General Application No. 3349 Of 2018

Nirmal Kanodia & Ors.

APPELLANT

Vs

Basudeo Agarwalla & Ors

RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Citation : (2018) 12 CAL CK 0080

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : S. R. Kakrania, Sanjeeb Seni, Aviroop Mitra, A. Saha

Final Decision : Allowed

Judgement

The Court: This is an application for substituting the name of the defendant no. 1 Basudeo Agarwalla with the name of his legal heirs and representatives as indicated in the affidavit in support of the Master's Summons.

There is also a prayer for condonation of delay of 986 days in filing the instant application for substitution.

Counsel appearing for the plaintiffs submits that the defendant no. 1 died on 27th December, 2015. It should be mentioned that the defendant no. 1 in the instant suit is the plaintiff no. 1 in C.S. No. 124 of 2011, filed by Basudeo Agarwalla who is now being represented by his legal heirs.

It is not in dispute that Basudeo Agarwalla died on 27th December, 2015. What the advocate-on-record of the defendants now urges is the delay of 986 days in filing the instant application. The advocate-on-record of the plaintiff submits that the legal representatives of Basudeo Agarwalla had earlier filed an application for substitution of the defendant no.1 (the plaintiff no. 1 in C.S. no. 124 of 2011) and for inclusion of the legal heirs of Basudeo Agarwalla in place and stead of Basudeo Agarwalla (the plaintiff no. 1 in the civil suit). It is submitted that this application was made in February 2017, after almost two years from the death of

Basudeo Agarwalla and that such application was allowed by an order dated 4th April, 2017 passed by the Hon'ble Justice Soumen Sen. Pursuant to such, and the legal heirs of Basudeo Agarwalla were brought on record to stop the abatement of the suit filed by Basudeo Agarwalla. It is further submitted that there has been a change of advocates representing the plaintiffs thereafter. An order passed by this court on 12th November, 2018 has been brought to my notice. By the said order, the plaintiff in the instant suit was given liberty to inspect the court's records before commencement of evidence. It is submitted that upon inspection of court's records, the advocate-on-record of the plaintiff noticed that the changes required to be made pursuant to the order dated 4th April, 2017 had not been effected in the instant suit. An application was immediately filed thereafter on 7th December, 2018 to pray for necessary reliefs namely substitution of Basudeo Agarwalla, the defendant no. 1 in the instant suit with his legal heirs. He explains the substantial delay in making the application by reason of the fact as stated above and submits that the instant application was made without any further delay as soon as the fact of the amendments not being carried out in the instant suit was noticed.

The advocate-on-record of the legal heirs of Basudeo Agarwalla seeks to file an affidavit to dispute the contentions made in the instant application.

However, in the view of this court, since the death of Basudeo Agarwalla is a matter of record and has been reflected in the order dated 4th April, 2017, the only point which remains is whether the delay in filing the instant application can be condoned. Since there has been a change of advocates representing the plaintiff in the instant suit and inspection made only after the order passed by this court on 12th November, 2018, there does not appear to be any basis for rejecting the instant application only on the ground of delay. The name of Basudeo Agarwalla (defendant no. 1) is required to be substituted with the names of the legal heirs and representatives as indicated in paragraph 17 of the application. It is pointed out that the defendant no. 2 is one of the legal heirs of Basudeo Agarwalla. Let the following persons accordingly be substituted in place and stead of the deceased defendant no. 1, Basudeo Agarwalla as indicated in paragraph 17 of the application. They are:

(i) Umadevi Agarwalla, wife

(ii) Deepak Agarwalla, son Both residing at G T Road, P.O. Chirkunda, Dist: Dhanbad, Jharkhand.

(iii) Usha Agarwalla, daughter of Late Basudeo Agarwalla, residing at 12C, Lord Sinha Road, Kolkata-700020.

(iv) Kiran Buddhia, daughter of Late Basudeo Agarwalla, residing at 2, Deodar Street, Kolkata-700019.

It is also submitted that defendant no. 3 is a company which has gone into liquidation and is being represented by the official liquidator. This change is also

required to be indicated in the plaint annexed to the application.

G.A. No. 3349 of 2018 is allowed in terms of prayers (a), (b), (c), and (d). The department is directed to carry out the amendments as indicated in the plaint within a period of three weeks from date. Leave is given to the plaintiff to reaffirm and reverify the plaint upon such amendments being carried out.