

DL-9

17.09.2026

Court No.551

[Bench ID-**266058**]

(AD)

(Disposed of)

In the High Court at Calcutta

Civil Revisional Jurisdiction

Appellate Side

CO 299 of 2020

Samanti Sporting Club

Vs.

Sri Ramchandra Pal & Ors.

Mr. Sabyasachi Mukhopadhyay, Advocate

Mr. Sarbajit Chowdhury, Advocate

... for the petitioner

1. The instant revisional application has been filed by the plaintiff in a suit being Title Suit No.109 of 1992 pending before the learned Civil Judge (Junior Division), 1st Court at Howrah assailing an order being Order No.180 dated April 1, 2019.
2. By the impugned order, the learned Trial Court rejected an application filed on behalf of the plaintiff/petitioner seeking substitution of deceased defendant no.3 who died in the year 1980. By filing an application before the learned Trial Court, the plaintiff sought to substitute the legal heirs of the deceased defendant no.3. The plaintiff/petitioner also prayed for substitution of legal heirs of the deceased defendant nos.6, 12 and 14. The exact date of death of such defendants were not disclosed in the petition filed on behalf of the plaintiff/writ petitioner.
3. It was held by the learned Trial Court that since the suit was filed much after the death of the deceased defendant no.3, the name of deceased

defendant no.3 was struck off from the cause-title as a suit could not continue against a dead person.

4. As against the other defendants, the learned Trial Court was of the view that abatement was a statutory provision which operated automatically and did not require any adjudication. According to the learned Trial Court, the suit had already abated on the expiry of the period of limitation for seeking substitution of such defendants. All that the learned Trial Court wanted by passing the impugned order that the plaintiff shall file an application for setting aside abatement because the suit had already abated as against the deceased defendants. The learned Trial Court also held that without setting aside of abatement, mere application for substitution could not succeed. Accordingly, the petition filed on behalf of the petitioner/plaintiff was rejected.
5. It is well settled principle of law as envisaged in Order XXII of the Civil Procedure Code that on the expiry of the period stipulated in such provision of law, the suit as against the dead party abates.
6. Learned Trial Court had granted the liberty to the petitioner/plaintiff to seek setting aside of such abatement by filing an application to that effect.
7. The learned Advocate appearing for the petitioner/plaintiff submits that the learned

Advocate appearing for the defendants in the Trial Court did not comply the provisions of Order XXII Rule 10A of the Civil Procedure Code by informing the death of the defendants who died during the pendency of the suit.

8. In the facts and circumstances of the case, I find no illegality or irregularity in the order impugned so far as it directed the plaintiff to file an application for setting aside of abatement.
9. However, it would be apposite to direct the learned Trial Court to provide an opportunity to the learned Advocate for the defendants to comply with the provisions of Order XXII Rule 10A of the Civil Procedure Code.
10. After such information is provided by the defendants in the suit, the petitioner/plaintiff shall file an application for substitution along with an application for setting aside of abatement as well as an application under Section 5 of the Limitation Act.
11. Learned Trial Court shall consider such applications, if filed, in accordance with law.
12. With the aforesaid modification, the instant revision application being **CO 299 of 2020** is **disposed of.**

(Md. Shabbar Rashidi, J.)