Court No. 6
(265719)

14.10.2026
(AD 30)

(S. Banerjee)

CO 3728 of 2026

Mr. Kajal Biswas
Vs.
Sri Omprakash Jalan & Ors.

Mr. Arnab Roy
Ms. Debanwita Biswas
...for the petitioner

Mr. Suvodeep Chakraborty
...for the opposite-party no. 2

This application under Article 227 of the Constitution of India is at the instance of the defendant no. 1(a) and is directed against an order dated August 17, 2026 passed by the learned Civil Judge (Sr. Division) 2nd Court at Alipore in Title Suit No. 44 of 2015. By the order impugned the application under Order 22 Rule 4 of the Civil Procedure Code along with an application under Section 5 of the Limitation Act, stood allowed thereby substituting the legal heir of the deceased proforma defendant no. 2.

Mr. Roy, learned advocate appearing for the petitioner submits that no prayer for setting aside the abatement was made.

It is now judicially settled that if the reasons for the delay in filing the application for substitution has been explained, the heirs and heiress of the deceased

party may be allowed to be substituted even though setting aside abatement was not expressly prayed for in the said application. It is also equally well-settled in such a case that it shall be implied that a prayer for setting aside the abatement has been made.

The learned trial judge noted that the plaintiffs have come to know about the death on September 22, 2024 and filed the application for substitution together with the application under Section 5 of the Limitation Act on February 11, 2025. The learned trial judge also noted the decision of the Hon'ble Supreme Court reported at 2025 INSC 183.

This Court, therefore, finds that the learned trial judge applied the proposition of law laid down by the Hon'ble Supreme Court correctly while allowing the payer for substitution.

Thus, the abatement, if any, stands set aside by the impugned order.

Accordingly, this civil revision application stands disposed of with the aforesaid observations.

(Hiranmay Bhattacharyya, J.)