

Present:

***MR. JUSTICE S.M. EMDADUL HOQUE***

CIVIL REVISION NO. 1065 OF 2018.

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Md. Ali Osman.

...Defendat-appellant-petitioner.

-Versus –

Mst. Parul Akter Khatun and others.

...Plaintiff-respondent-opposite parties.

Mr. Md. Abdul Haque, Advocate.

..... For the petitioner.

Mr. Md. Jashim Uddin, Advocate with

Mrs. Khadiza Akter, Advocate.

..... For opposite parties.

**Heard on and Judgment on 29.01.2024.**

On an application of the petitioner Md. Ali Osman under section 115 (1) of the Code of Civil Procedure the Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and decree dated 08.07.2015 passed by the learned Additional District Judge, Netrakona in Other Class Appeal No. 77 of 2005 disallowing the appeal and affirming the judgment and decree dated 12.03.2005 passed by the learned Assistant Judge, Madan, Netrakona in Partition Suit No. 58 of 1999 should not be set aside.

Mr. Md. Abdul Hoque, the learned Advocate appearing on behalf of the petitioner submits that the sole petitioner died long before and after came to know the same he tried his best to contact with the heirs of the

petitioner and the Tadbirkar of this revisional application but in vain and submits that this court may pass necessary order.

Mr. Md. Jashim Uddin, the learned Advocate along with Mrs. Khadiza Akter, Advocate enter appeared on behalf of the opposite-parties submits that the appellant petitioner Md. Ali Osman died on 09.10.2020 and accordingly a notice under form No. 10 was issued on 15.03.2022 but which was not served then the 1<sup>st</sup> reminder was sent on 19.03.2023 and the office also made note on 23.07.2023 to the effect: ~~আবেদনকারী~~ ~~কিং জুব্বি বর্গ~~ ~~N-10~~ ~~দ্বারা~~ ~~ক~~ ~~এবং~~ ~~রিজি~~ ~~স্ট্র~~ ~~ইজ~~ ~~ব~~ ~~সি~~

The learned Advocate further submits that since the court after the death of sole petitioner issued notice under form No.10 twice but the heirs of deceased petitioner not yet filed any application for substitution. The learned Advocate submits that normally a revision should not be abated by the death of the petitioner but at the same time when the sole petitioner in a revision died and no step has taken for substitution of the heirs of the petitioner the revision cannot run." In support he cited the decision of the case of Israil Md. Hossain –vs. Shah Iqbal Ahsan, reported in 48 DLR (HCD)-173. He prays for necessary order for discharging the Rule.

I have heard the learned Advocates of both the side and perused the papers and documents as available on the record.

It appears that the sole defendant petitioner filed this revisional application and accordingly the Rule was issued and the opposite parties

enter appeared through Vokatnama. It appears that during the pendency of this revisional application the sole defendant petitioner died on 09.10.2020. Accordingly N-10 notice was served and thereafter 1<sup>st</sup> reminder was also sent on 19.03.2023 but the notice was returned unserved. The learned Advocate of the petitioner tried his best to contact with the heirs and Tadbirker of the petitioner but in vain.

It is settled principle that a revision does not abate by the death of the sole petitioner applying the provision of order XXII Rule 3 and 4 of the code of civil procedure. This matter has been settled by the decision of the case of Khan Sahid Khan Mohammad Saadat Ali Khan –vs. Administrator of the City Corporation of Lahar, reported in PLD 1949 (Lahar)-541. But in considering the aforesaid decision in the case of Israil (Md) Hossain –vs. Shah Iqbal Ahsan and others, reported in 48 DLR (HCD)-373, a single Bench presided over by Mr. Justice Abu Sayeed Ahmed has taken view that: *“I accept the view that a revision does not abate but at the same time I am inclined to say that when the sole petitioner in a revision dies and no step is taken for substitution of the heirs of the petitioner the revision cannot run and be proceeded on and it stood just on the date of death of the sole petitioner. Thereafter, although it is not abated but it loses its force and is liable to be discharge.”*

Considering the facts and circumstances of the case and the cited decision of this court I am of the same view that the revision cannot run for an indefinite period for non taking step for substitution by the heirs of

the deceased sole defendant-petitioner. Thus I am inclined to discharge the Rule.

In the result the Rule is discharged for default, however, without any order as to cost.

The order of stay granted earlier by this court is hereby recalled and vacated.

Send down the lower court's record and communicated the order at once.

M.R.