

Civil Revision No. 2474 of 2004

Present:

Mr. Justice Md. Riaz Uddin Khan

25.02.2026

Mr. Dider Alam Kollol with
Ms. Farzana Rashid, Advocates
...For the opposite party-applicants
Mr. Md. Omar Farook, Advocate
...For the petitioner

An application has been filed by the opposite parties under Order-XXII, Rule-3 read with section 151 of the Code of Civil Procedure for abatement of the Civil Revision.

Mr. Dider Alam Kollol along with Ms. Farzana Rashid, the learned advocate appearing for the opposite party-applicants submits that the instant Civil Revision, at the instance of plaintiff-appellant-petitioner has arisen against Judgment and decree dated 22.03.2004 (decree signed on 29.03.2004) passed by the Additional District Judge, Cox's Bazar in Other Class Appeal No. 13 of 1998 affirming those dated 06.11.1997 passed by the Senior Assistant Judge, Chakaria, Cox's Bazar, in Other Suit No. 42 of 1991 dismissing the suit.

During pendency of the instant Rule, sole petitioner Mohammad Hassan died on 17.05.2025 intestate leaving behind his wife, five sons and two daughters. In this regard Death certificate and Warishsan certificate of late Mohammad Hassan issued by the concerned Administrator of Chakaria Pourashava, Cox's Bazar are annexed in the application.

The learned advocate for the applicant submits that no application has been filed within the period prescribed by law for substitution of the legal

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heirs of the deceased petitioner under Order XXII Rule 3 of the Code of Civil Procedure. As the sole petitioner has died and no steps have been taken within the time prescribed by law hence as per the provisions of Order XXII Rule 3 of the Code of Civil Procedure, the case has abated so far as the deceased Plaintiff-Appellant-Petitioner is concerned. The learned advocate prays for direction upon the office to record that the Civil Revision has been abated.

The learned advocate for the opposite party-applicant finally submits that even if this Rule is not abated in cannot be proceeded with as there is no one to proceed with Rule. In support of his contention the learned advocate cited a decision of Israil Hossain Vs. Shah Iqbal Ahsan and others reported in 48 DLR 173.

Mr. Md. Omar Farook, the learned advocate who was the petitioner for deceased sole petitioner submits that after came to know about the death of sole petitioner he communicated with the tadbirkar of the case but the heirs of the deceased petitioner have not come before this Court yet. He submits that the Civil Revision cannot be abated in accordance with law. However, he conceded that as per decision reported in 48 DLR (Supra) this Rule has lost its force.

I have heard the learned advocates for both the parties, perused the application. It turns out that both the parties admitted that the sole petitioner died on 17.05.2025. More than 90 days of statutory period for substitution has elapsed and no heir has come before this Court for substitution.

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I have perused the decision cited by the advocate of the opposite party applicant reported in 48 DLR 173 wherein his lordship held that *a revision does not abate but at the same time when the sole petitioner in a revision dies and no step is taken for substitution of the heirs of the deceased sole petitioner the revision cannot run, it loses its force and is liable to be discharged.* I am in respectful agreement with the view. In such view of the matter in the present case since no heir of the sole petitioner has come before this Court for substitution this Rule is discharged as no judgment and order can be passed against a dead person.

In the result the Rule is **discharged**. However, without any order as to cost.

Stay granted at the time of issuance of Rule stands vacated.

Send down the Lower Court Records and communicate the judgment and order at once.

[Md. Riaz Uddin Khan, J]