

Party Name : Smt. Milan Sarkar & 9 Ors Vs Legal Heirs Of Lt. Jamini Debnath & Ors

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HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

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These two applications have been filed for bringing on record the legal representatives of Lt. Jamini Debnath who was the sole respondent in RSA 15 of 2004.

It is not disputed that Jamini Debnath expired on 09.8.2009. In the application it is stated that the counsel for the respondent Jamini Debnath informed the counsel for the appellants about the death of the deceased only on 17.12.2013 and thereafter an intimation was sent to applicant No.9 who was pursuing the appeal on behalf of the others and he came and informed and then steps were taken to file the application.

In the reply filed it is stated that the averments made in the application are not correct and according to the legal heirs of respondent No.1 this application has been supported by the affidavit of the applicant No.9 Sri Amulya Sarkar. It is further alleged that Sri Dilip Sarkar applicant No.10 is the real brother of Amulya Sarkar. From the application itself it is apparent that both are real brothers being the sons of Sri Kusal Sarkar and they are residents of West Naraynpur, Police Station - Airpor, District - West Tripura.

Jamini Debnath was the father-in-law of Dilip Sarkar, the real brother of the person who has filed the affidavit. It is apparent that they are living in the same village if not in the same house and it cannot be believed that the applicant Amulya Sarkar was unaware about the death of the father-in-law of his real brother. Moreover, both the appellants and the respondents belong to the same village i.e. Narayanpur which falls within the Airport Police Station and in small villages in India each and every villager is aware of what happens in any portion of the country. Therefore, the averments made in the application are absolutely false. It has been urged on behalf of the petitioner that a duty was cast upon the counsel for the sole respondent to inform this Court and the opposing counsel about the death of the sole respondent.

I have perused the record of the regular second appeal and I find that on 22.8.2013 a statement was made by Mr. R Dutta who is counsel for the appellants that he had been informed by Mr. D Chakraborty that day itself i.e. on 22.8.2013 that the sole respondent has expired. Not only this, I find that on 25.9.2013 again Mr. D Chakraborty in Court himself informed that the sole respondent has already expired. This was the second information given on behalf of the respondent. At that time a prayer was made on behalf of the appellants that steps would be taken to bring on record the legal representatives. Thereafter on 29.11.2013 Mr. A K Bhowmik learned senior counsel had appeared on behalf of the appellants and stated that he may be granted on month's time to file application to bring on record the legal representatives. Despite these facts being reflected in the order sheet the applicants have the audacity to put up a false case that they came to know about the death of the sole respondent for the first time on 17.12.2013. Therefore, the averment made in the application that the defendant-applicants came to know about the death of the sole respondent only on 17.12.2013 when Sri S R Dey informed them about the death of the sole respondent is also false.

This Court, normally, is very liberal in condoning delay but any litigant who wants the delay to be condoned must come to Court with clean hands and must tell the truth. Here the litigant has tried to hoodwink the Court and has suppressed the fact that on three dates prior to 17.12.2013 in Court statements had been made that the sole respondent is dead. Therefore, I find no merit in the applications and as such the application for condonation of delay is rejected as well as the application for substitution is also dismissed.