

**12.07.
2022**

Ct. No. 04

Ab

WPLRT 133 of 2003

With

**IA No. CAN 9 of 2019 (Old No. CAN 11599 of 2019)
IA No. CAN 10 of 2019 (Old No. CAN 11600 of 2019)
IA No. CAN 11 of 2019 (Old No. CAN 11601 of 2019)
IA No. CAN 12 of 2019 (Old No. CAN 11608 of 2019)
IA No. CAN 13 of 2019 (Old No. CAN 11609 of 2019)**

Mali Bewa @ Bibi and others

Vs.

Sk. Fajlu and others.

Mr. Pradip Kumar Roy.

... for the petitioners/applicants.

**Re: IA No. CAN 10 of 2019 (Old No. CAN 11600 of 2019), CAN 11 of 2019 (Old No. CAN 11601 of 2019),
CAN 12 of 2019 (Old No. CAN 11608 of 2019)**

The aforesaid applications have been taken out for condonation of delay in taking out an application for substitution after setting aside the abatement, an application for setting aside the abatement and an application for substitution, after the dismissal of the instant writ petition for default on 25th July 2018.

It is indicated in the aforesaid applications that after the death of the sole writ petitioner, the present applicants were substituted in his place and stead on 10th November 2016. However, the writ petition appeared before the Court on 25th July 2018 and since no one appeared for the respective parties, the writ petition was dismissed for default. The moment the writ petitioner came to know of the fact that the writ petition has been dismissed for default, they were advised to take out an application for restoration thereof.

In the meantime, the writ petitioners came to know that the sole respondent died and the substitution of the

heirs and legal representatives are required to be taken out after setting aside the abatement and, in fact, such application was taken out. The writ petitioners immediately caused a letter upon the learned Advocate, who represented the deceased respondent, to disclose the name of the heirs and legal representatives but there was no response from his end. Ultimately, the writ petitioners could collect the name of the heirs and legal representatives of the deceased respondent and took out the aforesaid applications along with the application for restoration upon condonation of delay.

After hearing the writ petitioners and on perusal of the materials, we are of the view that the sufficient cause has been shown for delay in taking out the application for substitution after setting aside the abatement and, accordingly, the delay in taking out such application is hereby condoned. The heirs and legal representatives of the deceased sole respondent, as disclosed in paragraph 5 of the said application, are substituted in place and stead of the said respondent.

The office is directed to make necessary correction in this regard.

Simultaneously, we find that sufficient explanation has been offered for not taking out the application for restoration within the time frame. It further appears that the ground shown for non-appearance on the day, when the matter was dismissed for default, was beyond the control of the writ petitioners and no negligence and carelessness was attributed in their conduct.

Accordingly, the application for restoration is allowed upon condonation of delay.

In view of the findings mad herein above, the applications being CAN 9 of 2019 (Old No. CAN 11599 of 2019) and CAN 13 of 2019 (Old No. CAN 11609 of 2019) are hereby disposed of.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)