

05.05.2022
Item No.03
Suman
Ct.42

S.A. 40 of 2001
With
CAN 1 of 2006 (Old CAN 2555 of 2006)
With
CAN 2 of 2015 (Old CAN 1582 of 2015)
With
CAN 3 of 2021

Subodh Ranjan Das (since deceased) his LRS
Vs.
Promode Ranjan Das (since deceased) his LRS

Mr. Sibasis Ghosh
...for the appellant

Mr. Amal Krishna Saha
...for the respondent

In Re:- **CAN 3 of 2021**

This is an application filed by the legal heirs of original respondent No.1 Promode Ranjan Das, since deceased. It is stated by the petitioners by filing the instant application that this Court dismissed the Second Appeal No. 40 of 2001 on contest affirming the judgment and decree of the Court below by a judgment dated 5th February, 2020. The petitioners received the certified copy of the said judgment on 18th January, 2021 because prior to January, 2021 as a result of Covid Pandemic normal functioning of the Court was disrupted. It is also stated by the

petitioners that the respondent No.1 died before passing of the decree leaving behind the petitioners as his legal heirs and representatives. During pendency of the Second Appeal the legal heirs and representatives of the respondent No.1 filed an application for substitution. However, the said application was never moved and the appeal was disposed of and decree was passed against respondent No.1, since deceased. Under such circumstances, the petitioner has prayed for allowing the application for substitution being CAN No.1582 of 2015 and amending the decree passed in S.A. No.40 of 2001.

The legal heirs of the original appellant have submitted an affidavit-in-opposition stating, inter alia, that the application for amendment of decree by allowing the application for substitution on the death of deceased respondent is not at all maintainable under the facts and circumstances of the case because after passing of the decree in appeal, this Court cannot dispose of any application which was not moved by the petitioner. It is further stated by the opposite parties that the substituted appellants have already filed a Special Leave Petition which was registered as SLP Civil No.11720 of 2021 before the Hon'ble Supreme Court challenging the judgment and

decree dated 5th February, 2020 passed by this Court in S.A. No.40 of 2001. If the petitioners want to be substituted in the said proceeding, they are at liberty to file an appropriate application before the Hon'ble Supreme Court.

Having heard the learned advocates for the parties and on careful perusal of the materials on record, the learned advocate for the legal heirs of the deceased respondent No.1 is directed to take necessary step for substitution before the Hon'ble Supreme Court in pending appeal. S.A. 40 of 2001 was disposed of by this Court after hearing the learned advocates for the parties. At that point of time, none of the parties pointed out that an application for substitution on the death of the original respondent No.1 is pending.

At this stage, since the Court is not in sesin over the matter, this Court is of the view that the petitioners can rectify the record by filing an application for substitution before the Hon'ble Supreme Court in SLP Civil No.11720 of 2021.

The instant application is, thus, disposed of.

(Bibek Chaudhuri, J.)

