

S/L 19
28.01.2022
Court. No. 19
GB

CAN 2 of 2005 (Old No: CAN 10535 of 2005)
(Not in file)
With
CAN 5 of 2016 (Old No: CAN 4112 of 2016)
(Not in file)
With
CAN 6 of 2021
With
CAN 7 of 2021
In
SMA 2 of 2020

Subodh Chandra Bhowmic & Ors.
Vs.
Basanti Prova Das & Ors.

(Through Video Conference)

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray.

...for the Petitioners.

Mr. Susenjit Banik.

...for the Respondent No.5.

CAN 6 of 2021 is an application for recalling of the order dated June 15, 2021 and CAN 7 of 2021 is an application for substitution of the heirs of respondent no.5 in the appeal, filed by the heirs of the respondent no.5. This Court had dismissed the appeal as infructuous, on the prayer for the learned advocate for the appellants.

Today, it is submitted that the appellant no.1 and respondent no.5 died on February 10, 2017 and February 21, 2020 respectively, but no substitution application has been filed by the appellants. Such fact was not brought to the notice of the Court by the learned advocates for either the

appellants or the respondent No. 5 on the date when the second miscellaneous appeal was dismissed as infructuous on the prayer of the appellants.

Under such circumstances, the order dated June 15, 2021 recording the submission of the respondent No. 5 made through his learned Advocate could not have been passed as the submissions on behalf of a deceased respondent were non-est in the eye of law. The learned Advocate could not have made such submissions on behalf of a dead person. The appeal had abated in respect of the said respondent.

Moreover, it also appears that on the death of the respondent No. 5 and as service of the notice of appeal on the other respondents had been dispensed with by a coordinate bench of this court, the appeal has abated, in effect, as a whole. This court could not have passed the order dated June 15, 2021 in an abated appeal and the same is recalled. CAN 6 of 2021 is allowed.

This court does not have jurisdiction to hear CAN 7 of 2021. Liberty to take steps.

(Shampa Sarkar, J.)