

14.09.2021
Srimanta
Sl. No. 15
Ct. No. 09

IA No.:CAN/2/2016 (Old No.:CAN/3644/2016)
in
WPA/13806/2005
[Via Video Conference]

Joinal Abedin
-Vs.-
Union of India & Ors.

Mr. K.B.S. Mahapatra, Adv.,
Mr. Kasinath Bhattacharya, Adv.,
Mrs. Rama Santra, Adv.

...for petitioner.

Mr. Prithu Dudhoria, Adv.

...for the Union of India.

Learned Advocate for the petitioner submits placing reliance on a reported decision of this Court in the case of ***Shanker De Bhattacharyya –Vs.- Smt. Jyotirmoyee Devi & Ors.*** reported in ***A.I.R. 1998 Cal 55*** that in case of substitution of the deceased petitioner by his legal heir the period of limitation is three years. The Coordinate Bench while passing order dated 26th June, 2015 failed to consider the ratio decided by this Court in the above-mentioned report. Therefore, the said order dated 26th June, 2015 may be recalled.

It is submitted by Mr. Prithu Dudhoria, Learned Advocate for the respondents/Union of India that the widow of the writ petitioner filed an application for substitution which was registered as CAN 11362 of 2014 while her husband died on 8th July, 2012.

A Coordinate Bench of this Court dismissed the said application for substitution vide order dated 26th June, 2015 on the ground that the explanation of

delay in filing of the said application was wholly unsatisfactory. Thus on dismissal of the application for substitution, the writ petition cannot exist.

An order under the provision of Order XXII Rule 9 CPC, for substitution on setting aside abatement on condonation of delay is appealable under Order XLIII Rule (1)(k) of the Code of Civil Procedure. Therefore, efficacious relief of the petitioner lies not in filing an application for recalling of the order dated 26th June, 2015 but by preferring an appeal against the said order as well as the instant order, if the writ petitioner thinks fit and proper. Under such conspectus, the application being CAN 3644 of 2016 is considered and **rejected**. In view of the rejection of the said application, this Court is not in a position to hear out the writ petition on merit. Accordingly, the instant writ petition is also **dismissed**.

(Bibek Chaudhuri, J.)