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Ct-17

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**FMAT 1165 of 2019
with
I.A No. CAN 1 of 2021
CAN 2 of 2021
(Via Video Conference)**

**Parag Roy Chowdhury & Anr.
Vs.
Jayashree Roy Chowdhury**

Mr. Saptangshu Basu
... For the Appellants

Mr. Rajarshi Dutta
... For the Respondent

**Re:CAN 1 of 2021
(Condonation of Delay)**

CAN 1 of 2021 is an application for condonation of delay. There is a delay of 5 days in preferring the appeal.

We have seen the explanations offered by the appellants for preferring the appeal beyond the statutory period of limitation. We are satisfied with those explanations.

Accordingly, the application for condonation of delay is allowed upon condoning the delay of 5 days in preferring the appeal.

CAN 1 of 2021 is thus disposed of.

Let the appeal be registered, if it is, otherwise in form.

CAN 2 of 2021(Stay Application)

This appeal has arisen out of an order dated 5th August, 2019 in a probate proceeding that was marked as 'contentious'.

In the contentious proceeding, the executor died after his evidence was over. The other named executors in the Will apparently did not join the executor, since deceased, at the time of

filing of the probate proceeding. Due to the death of the executor the beneficiaries named in the said Will filed an application for substitution. However, the said application is not maintainable in view of Sections 229, 230 and 231 of the Indian Succession Act, 1925. Moreover, they could not have prayed for letters of administration with the Will annexed without following the procedure prescribed under the Indian Succession Act. The conversion of the proceeding is subject to the fulfillment of the aforesaid requirements prescribed under the Succession Act.

In view of the above, we do not find any reason to interfere with the order under challenge. However, it shall be open to the applicants to take appropriate steps in accordance with law.

FMAT 1165 of 2019 is accordingly dismissed.

In view of dismissal of the appeal CAN 2 of 2021 is also disposed of.

There shall be no order as to costs.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of all undertakings.

(Saugata Bhattacharyya,J.) (Soumen Sen, J.)

