

21.12.2022
SL No.4 wt 5
Court No.8
(gc)

FA 73 of 2007
CAN 1 of 2002 (Old No: CAN 8650 of 2002)
CAN 3 of 2007 (Old No: CAN 3358 of 2007)
CAN 5 of 2011 (Old No: CAN 8566 of 2011)
CAN 6 of 2012 (Old No: CAN 825 of 2012)
CAN 7 of 2022
CAN 8 of 2022
CAN 9 of 2022
CAN 10 of 2022
CAN 11 of 2022
CAN 12 of 2022
CAN 13 of 2022

Suresh Kumar Sharma
Vs.
Biman Krishna Bose

With

FAT 2546 of 2007
CAN 1 of 2011 (Old No: CAN 8857 of 2011)
CAN 2 of 2021
CAN 3 of 2022

Biman Krishna Bose
Vs.
Nando Kishore Sharma

Mr. Kamlesh Jha,
Ms. Srabani Biswas,

...for the Appellant
in FA 73 of 2007
...for the Respondent
in FAT 2546 of 2007.

Mr. Dwaipayan Basu Mallick,
Mr. Rishabh Karnani,
Mr. Anurag Bagaria,

...for the Appellant
in FAT 2546 of 2007
...for the Respondent
In FA 73 of 2007.

The explanation offered by the department for not being able to trace out FAT 2546 of 2007 is not accepted. However, a shadow file may be created for the time being where this order shall be kept until the original file is traced out.

Re: CAN 8 of 2022
In
FA 73 of 2007

By consent of the parties, the application for condonation of delay in filing the application for restoration in FA 73 of 2007 is allowed. The delay of 2696 days in filing the application for restoration is condoned.

Accordingly, the application being CAN 8 of 2022 stands disposed of.

Re: CAN 7 of 2022
In
FA 73 of 2007

This is application for recalling of the order dated 20.02.2015 by which the first appeal was dismissed for default with a prayer for disposal of the appeal on the basis of the memorandum of settlement arrived at between the parties on 31st August, 2022.

By consent of the parties, the order dismissing the first appeal for default dated 20.02.2015 is hereby recalled. The appeal is restored to its original file and number. Insofar as the recording of settlement is concerned, there is a separate application and we shall pass a separate order in respect of the application being CAN 13 of 2022.

Accordingly, the application being CAN 7 of 2022 stands disposed of.

Re: CAN 9 of 2022
With
CAN 10 of 2022
In
FA 73 of 2007

The application for setting aside abatement by condoning the delay in taking out an application for substitution are taken up together and by consent of the parties, the order of abatement is set aside. We record the death of plaintiff/respondent, Biman Krishna Bose and allow the substitution application by incorporating the name of Mainak Bose, son of Late Biman Krishna Bose, executor to the estate of Biman Krishna Bose in his place and stead.

The death certificate of deceased is taken on record.

The department is directed to carry out the amendment in the cause title of the memorandum of appeal and all related cause papers within two weeks from date.

Accordingly, the applications being CAN 9 of 2022 and CAN 10 of 2022 stand disposed of.

Re: CAN 11 of 2022
With
CAN 12 of 2022
In
FA 73 of 2007

In view of the order passed in CAN 9 of 2022 and CAN 10 of 2022, these two applications being CAN 11 of 2022 and CAN 12 of 2022 are, accordingly, allowed and disposed of.

Re: CAN 13 of 2022
In
FA 73 of 2007

This is an application for recording compromise. During the pendency of the appeal, it appears that the parties have agreed to settle their disputes amicably by entering into a terms of settlement duly reduced in writing dated 31st August, 2022. The joint compromise petition is duly signed by the parties. The memorandum of settlement is also duly signed by the parties.

In view of the fact that we allowed the application for substitution of the deceased by Mainak Bose, the executor appointed under the Will of Biman Krishna Bose, we allow this application for recording compromise on the basis of the memorandum of settlement being Annexure-‘A’ to the petition. The terms are lawful.

Accordingly, the application being CAN 13 of 2022 stands disposed of.

In view of the aforesaid, the decree under challenge is set aside. The suit is decreed on the basis of the memorandum of settlement dated 31st August, 2022.

The department is directed to draw up the decree as expeditiously as possible after the substitution being carried out.

Re: CAN 1 of 2011
(Old No: CAN 8857 of 2011)
With
CAN 2 of 2021
In
FAT 2546 of 2007

In view of the order passed in FA 73 of 2007, the substitution applications filed by the respective parties for bringing on record Mainak Bose as the executor of the last Will of Biman Krishna Bose and the application for substitution of Suresh Kumar Sharma in place and stead of Nanda Kishore Sharma who had died during the pendency of the appeal are allowed.

The department is directed to carry out the necessary amendment in the memorandum of appeal and the related cause papers within two weeks from date.

Accordingly, the applications being CAN 1 of 2011 (Old No: CAN 8857 of 2011) and CAN 2 of 2021 stands disposed of.

Re: CAN 3 of 2022
In
FAT 2546 of 2007

This is an application for recording compromise. We have allowed the application for recording compromise in FA 73 of 2007 being CAN 13 of 2022. There may not be any necessity to draw up two separate decrees. However, we allow the compromise petition for the reasons we have recorded in our order in disposing of CAN 13 of 2022.

Accordingly, the application being CAN 3 of 2022 stands disposed of.

A shadow file shall be created by the department.

The parties are directed to make available copies of CAN 1 of 2011 (Old No: CAN 8857 of 2011) and CAN 2 of 2021 to the department concerned and the said copies

shall be treated as original until the original file is traced out.

Accordingly, both the appeals and the connected applications are disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

This order shall be immediately communicated to the Registrar Administration (L&OM) for compliance of this order.

(Uday Kumar, J.)

(Soumen Sen, J.)