

71 18.07.2022
SB Ct. No. 8

F.M.A.T. 1274 of 2006
with
CAN 1 of 2006
+
CAN 2 of 2008

In the matter of : Md. Ainul Haque

This matter appeared in the warning list on 6th July, 2022 and continued to appear in the list until it was transferred to the daily cause list today.

None appears on behalf of the appellant, nor any accommodation is prayed for on behalf of the appellant.

The appeal is arising out of an order dated 15.01.2005 passed by the learned Judge, 9th Bench, City Civil Court at Calcutta in Misc Case No. 1508 of 2004 arising out of Title Suit No. 819 of 1998.

The appellant filed an application for setting aside the abatement of the suit. The appellant contended that the defendant no. 7 Anwar Jahan died on 2.4.2000 leaving behind her husband and one daughter and the defendant no. 11 Rashida Khatoon had died on 11.6.01 leaving behind her husband and five sons. The appellant claimed to be a person of less education. He was not aware of the legal provision. He filed an application for substitution during the period of limitation.

On consideration of the evidence on record it transpires from the evidence of P.W. 1 that he had signed the examination of chief after reading the contents of the same personally and he was running one business. He had admitted that he can read English language. The appellant could not explain that delay of almost 1 ½ year was communicating the names by informing his advocate about the death of the aforesaid persons. The

information was furnished on June 2003 and the application was filed almost after lapse of 13 months from the date of such information furnished to the learned advocate of the appellant. The delay being not sufficiently explained from the side of the petitioner in the examination-in-chief, the learned Trial Judge dismissed the said Misc. case and refused to set aside the order of abatement.

We do not find any reason to interfere the said order.

Accordingly, the appeal and applications are dismissed without any order as to costs.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)