

17.11.2022

Court No.32
rpan/06

FAT 277 of 2017

+

IA No.: CAN 2 of 2019 (Old No.: CAN 767 of 2019)

+

IA No.: CAN 3 of 2021

+

IA No.: CAN 4 of 2021

+

IA No.: CAN 5 of 2022

Sk. Nasir Ali & Others

- Versus -

Sk. Khairul Basar & Others

Mr. Gopal Ghosh,
Ms. S. Dey Pal
... for the Appellants.

Affidavit-of-service filed by the appellants be kept on record. In spite of service no one appears on behalf of the respondents.

IA No.: CAN 2 of 2019 (Old No.: CAN 767 of 2019)

Mr. Ghosh, learned advocate appearing for the appellants submits that the respondent no.3, namely, Mst. Khairunessa Bibi died intestate on 24th September, 2017 leaving behind her two sons, namely, Sk. Khairul Basar and Sk. Khairul Kabir, who are already on record as respondent nos. 1 and 2 respectively.

Taking note of such fact, the application, being IA No.: CAN 2 of 2019 (Old No.: CAN 767 of 2019) is disposed of.

Office is directed to expunge the name of the respondent no.3 from the cause title of the memorandum of appeal.

IA No.: CAN 3 of 2021

The present application has been filed within time for substitution of the heirs of the respondent no.7, who died intestate on 12th December, 2020 leaving behind her only son, namely, Hyder Ali, who is major and *sui juris*.

Upon hearing Mr. Ghosh and considering the materials on record the application of substitution, being IA No.: CAN 3 of 2021 is allowed.

Office is directed to incorporate the name of Hyder Ali in place and stead of the respondent no.7 in the memorandum of appeal.

The application being IA No.: CAN 3 of 2021 is, accordingly, disposed of.

IA No.: CAN 4 of 2021

The present application has been filed praying for substitution of the deceased after setting aside abatement upon condonation of delay.

The appellant no.11 died intestate on 23rd December, 2020 leaving behind the legal heirs, as detailed in paragraph 3 of the application. The legal heirs are all major and *sui juris* and the application has been filed within time. Accordingly, the prayer for substitution is allowed.

Office is directed to incorporate the names of the legal heirs of the appellant no.11 in place and stead of the appellant no.11 in the cause title of the memorandum of appeal.

The appellant no.9 died intestate on 24th January, 2019 leaving behind the legal heirs, as detailed in paragraph 2 of the application. We are satisfied with the explanation given towards the delay in filing the substitution application so far as the respondent no.9 is concerned. Such delay is, accordingly, condoned and the application for substitution is allowed upon setting aside abatement, so far as the heirs of the deceased respondent no.9 is concerned.

The application for substitution, being IA No.: CAN 4 of 2021 is disposed of.

Office is directed to incorporate the names of the legal heirs of the appellant no.9 in place and stead of the appellant no.9 in the cause title of the memorandum of appeal.

IA No.: CAN 5 of 2022

This is an application for substitution of the legal heirs of the appellant no.7, who died intestate on 23rd February, 2022.

The names of the legal heirs of the appellant no.7 have been detailed in paragraph 3 of the application. All

the said legal heirs are major and *sui juris* and the application is within time.

Upon hearing Mr. Ghosh and upon considering the materials on record, the application for substitution being IA No.: CAN 5 of 2022 is allowed directing substitution of the name of the legal heirs of the appellant no.7, as detailed in paragraph 3 of the application, in place and stead of the appellant no.7.

Office is directed to incorporate the names of the legal heirs of the appellant no.7 in place and stead of the appellant no.7 in the cause title of the memorandum of appeal.

Mr. Ghosh submits that the appeal is ready for hearing and paper books have already been filed.

In view thereof, list the appeal for final hearing three weeks hence.

The appellants are directed to intimate this order to the learned advocate, who entered appearance on behalf of the respondents.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)