

03.08.2022
KC(50)

F.A.T. 439 of 2018
State of West Bengal
-versus-
Kamal Ghosh @ Kamal Kumar Ghosh and Ors.
With
CAN 1 of 2018 (Old CAN No. 6609 of 2018)
With
CAN 2 of 2018 (Old CAN No. 6633 of 2018)

Ms. Pompy Bose,
Mr. Abhra Mukherjee,
Mr. Souradeep Dutta.....For the respondent
no. 1.

A much delayed appeal was filed in this court. The delay was of about 1573 days. An application for condonation of delay accompanied the memorandum of appeal.

However, as alleged by Ms. Pompy Bose, learned advocate for the respondent no. 1 and not controverted by the appellant, the said respondent was dead at the time of filing of the appeal. He died on 27th February, 2017 as would be evident from the records of the proceedings before the learned court below in execution, copies whereof were handed over to us.

Order XXII of the Code of Civil Procedure applies to death, marriage and insolvency of parties. Rule 11 lays down that the Order applies to appeals as much it does to suits.

If during pendency of a suit or appeal, the defendant or respondent dies then the procedure under

Order XXII Rule 4 of the Code has to be adopted to substitute his legal representative as a party.

As held by the division bench of this court in State of West Bengal –vs- Manisha Maity and Ors., reported in AIR 1965 Cal. 459 the said rule has no application when the appeal is preferred against a dead person. “But if an appeal be preferred against a dead respondent the appeal itself is still born and is no appeal in the eye of law. Nothing in Order XXII of the Code will revive the appeal when death of the respondent comes to light”, was the observation of Mr. Justice B.N. Banerjee delivering the judgement of the division bench.

This decision was approved and followed by the Supreme Court in Gurcharan Singh –vs- Surjt Singh and Anr. decided by the Court on 2nd November, 2012.

For those reasons, the appeal and the connected applications are dismissed.

(I.P. MUKERJI, J.)

(SUBHENDU SAMANTA, J.)

