

15.05.2023
SL No.8
Court No.8
(gc)

**RVW 211 of 2022
CAN 1 of 2023
In
SA 426 of 2007**

**Sri Sri Khageshewar Shiv Thakur
Represented by its Shebait
Siddhinath Roy @ Siddeswar Roy
Vs.
Smt. Jyotsna Roy & Ors.**

Mr. Sankar Prasad Dalapati,
Mr. Sourav Mondal,
...for the Appellant.
Mr. Arijit Chatterjee,
Mr. Tirtha Pati Acharyya,
...for the Respondent No.3.

A thoroughly misconceived application in the nature of review has been filed. In fact, the second appeal was dismissed as the supplementary affidavit was not filed as prayed for on 23rd August, 2022 by Mr. Dalapati, Advocate appearing on behalf of the appellant. In the order dated 23rd August, 2022, we have recorded that in the event the supplementary affidavit is not filed, the appeal may stand abated. At that point of time, the question of abatement would not have arisen as the respondent No.3 was representing the estate of the respondent Nos.1 and 2 as the sole legal heir.

The learned Counsel for the respondent No.3 submits that the respondent No.1 died intestate on 17th December, 2012 and the respondent No.2 died intestate on 17th November, 2011. The respondent No.3 was already on record. The respondent No.3 is the only legal

heir of the respondent Nos.1 and 2. In fact, an application for recording the death of the respondent Nos.1 and 2 ought to have been taken out in the meantime. A prayer for question of abatement would not arise on 23rd August, 2022 by reason of the fact that the respondent No.3 is already on record and the appellant was alive. The appellant died on 5th January, 2023 for which an application has now been taken out for substitution.

For the ends of justice, the application for review is considered to be an application for recalling of the order dated 23rd August, 2022, although, no application for recording the death of the respondent Nos.1 and 2 has been filed.

Having regard to the fact that the learned Counsel for the respondent No.3 has fairly admitted that the respondent Nos.1 and 2 died after the admission of the second appeal on the dates mentioned, we direct the department to record the death of the respondent Nos.1 and 2 who died intestate on 17th December, 2012 and 17th November, 2011 respectively, the application for substitution of the sole appellant is also allowed having regard to the statements made in paragraphs 8 and 9 of the petition.

It has been submitted that the proposed substituted applicants are the legal heirs of the original shebait, namely, Siddhinath Roy and their right to sue survives as

the office of shebaiti right is hereditary. However, having regard to the fact that the proposed applicants are the legal heirs of the original shebait, we allow the application for substitution.

We direct the department to substitute the name of the applicants instead and in place of Siddhinath Roy. The department is directed to carry out the necessary amendment in the memorandum of appeal and all related cause papers by 12th June, 2023.

Mr. Dalapati, learned Advocate for the appellant shall serve an amended copy of the memorandum of appeal upon Mr. Tirtha Pati Acharyya, learned Advocate on record on behalf of the respondent No.3 within a week thereafter.

The review application being RVW 211 of 2022 and the connected application being CAN 1 of 2023 are, accordingly, 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.

(Uday Kumar, J.)

(Soumen Sen, J.)