

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

13.06.2023
Item No.-82
Court No. 01
sg

**FAT 15 of 2022
CAN 1 of 2023
CAN 2 of 2023**

In the matter of: Sandipan Mukherjee

Mr. Arnab Saha

For the appellant

In Re: CAN 2 of 2023

There is a delay of 47 days in preferring the appeal.

Sufficient cause being shown for not being able to prefer the memorandum of appeal within the period of limitation.

The delay of 47 days in preferring the appeal is condoned.

CAN 2 of 2023 is, thus, disposed of.

In Re: CAN 1 of 2023 and FAT 15 of 2022

The appeal and the stay application are taken up for consideration and disposed of by this common order.

This appeal is arising out of a judgment and order dated 7th June, 2022 passed by the learned Civil Judge (Senior Division) cum District Delegate at Alipurduar in connection with an application filed under Section 372 of the Indian Succession Act, 1995 praying for issuance of succession certificate.

The appellant is the sole legal heir and representative of the deceased. Upon the death of his

father, the appellant filed the application for grant of letters of administration based on the place of death of his father. The application was rejected on the ground that the deceased was not ordinarily residing at the time of his death within the jurisdiction of the Court and for which the application was filed.

We have heard the learned Counsel for the appellant and considered the documents relied upon by the appellant for obtaining succession certificate. The learned Trial Judge seems to have proceeded on the basis that since the deceased also had a place of residence at Baruaipur and Alipurduar is not his ordinary place of residence rejecting the application for succession certificate.

It appears from the evidence that at the time of death, the father of the appellant was a resident of Alipurduar and there are sufficient documents produced before the learned Trial Court to show his place of residence at Alipurduar. Although, it cannot be disputed that he also had a place of residence at Baruaipur but the evidence would reveal that the deceased ordinarily resided at the time of death within the jurisdiction of Alipurduar.

Accordingly, we are of the view that the succession certificate should have been issued in favour of the applicant by the learned Trial Court. Moreover, we find that upon publication being made inviting objection, no objection has been filed against grant of succession

certificate.

Under such circumstances, the appeal is allowed.

The learned Civil Judge (Senior Division), Alipurduar is directed to issue succession certificate in the name of the appellant within two weeks from the date of communication of this order.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

The appeal and the stay application being CAN 1 of 2023 are, accordingly, disposed of.

(Raja Basu Chowdhury, J.)

(Soumen Sen, J.)