

251 **17.05.**
2024
Ct. No. 04

ab

FMA 128 of 2018
IA No. CAN 1 of 2016 (Old No. CAN 384 of 2016)
IA No. CAN 2 of 2024

Biswanath Das and another
Vs.
Gour Das and others.

Mr. Susenjit Banik,
Mr. Kanai Lal Dutta,
Mr. Mrinal Saha.
... for the respondents/applicants.

Re: CAN 2 of 2024

The affidavit of service filed in Court today is kept with the record. Despite service there is no appearance on behalf of the respondents.

It is submitted by the Counsel for the respondents that previous to services through post, the copy of the instant application was sought to be served upon Mr. Ramprakash Banerjee, learned Advocate, representing the appellants, who refused to accept the same for want of instruction.

The instant application is taken out for dismissal of the instant appeal on the ground that it has become infructuous. The instant appeal arises for an order dated 16th July 2015 passed in Title Suit No. 302 of 2014, by which an application for temporary injunction was rejected on contest. The copy of an order no. 26 dated 14th December 2015 annexed with the instant application is placed for limited purpose that the said suit was subsequently dismissed for non-compliance of the Court's order.

In absence of any dissent to the said fact as the appellants are not appearing, we find no justification in not proceeding on the basis of the disclosure of the facts in the instant application that the said suit is no longer alive.

Since the instant appeal arises from an interlocutory order passed in the suit, which is subsequently dismissed, the instant appeal becomes infructuous and the same is accordingly dismissed.

The instant application being CAN 2 of 2024 is disposed of.

In view of dismissal of the appeal itself, the connected application being CAN1 of 2016 (Old No. CAN 384 of 2016) has become infructuous and the same is also dismissed.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)