

23.04.2021

Sl. No.7

Court No.9
BM.

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SA/407/1993

With

IA No.:CAN/1/2004(Old IA: CAN/6108/2004)

With

IA No.:CAN/2/2013 (Old IA: CAN/2889/2013)

with

IA No.:CAN/3/2013 (Old IA: CAN/3889/2013

BASUDEV DEY

Vs.

HARI SADHA BASU

(Via Video Conference)

Re : IA No.:CAN/3/2013 (Old IA: CAN/3889/2013

In the captioned of this application, the appellant petitioner has sought for restoration of an order dated 9.4.2013 passed by Hon'ble Justice Tarun Kumar Gupta in connection with S.A No.407 of 1993, inter alia, on the ground that just after dismissal of the appeal the appellant petitioner has preferred this application just four days after.

It is pointed out that the matter was being watched by the lawyer's clerk in the list of the Hon'ble Court but when the matter was called on none appeared as a result the appeal was dismissed for default when the appeal was listed for final hearing. It would appear that the prayer on behalf of the petitioner appellant was for restoration of appeal to its

file and number on recall of the order dated 9.4.2013. Therefore, considering the substance of the application but ignoring the caption of the application for restoration of the order of dismissal, the prayer is considered taking a lenient view in the matter. Accordingly, the order dated 9.4.2013 is recalled and the appeal being S.A No.407 of 1993 be restored to its original file and number. The appellant petitioner is directed to notify the other side and then only the appeal be listed for final hearing.

Re : IA No.:CAN/1/2004 (Old IA: CAN/6108/2004)

This is an application whereby the appellant petitioner has sought for substitution of the heirs of the sole respondent Hari Sankar Basu who died on 23rd April, 2004. It is submitted that he died during pendency of the appeal leaving behind heirs and legal representatives mentioned in paragraph 4 of the application. They are major sui juris and sound mind and right to prosecute the case survives on them. Accordingly, application for substitution is considered and allowed.

Let the names of heirs and legal representatives mentioned in paragraph 4 of the application be incorporated in the cause title of the memorandum of appeal.

Thus, application being IA No.:CAN/1/2004 (Old IA: CAN/6108/2004) is disposed of.

Re : IA No.:CAN/2/2013 (Old IA: CAN/2889/2013)

This is an application for substitution upon the death of Smt. Ashalata Mitra, respondent no.1C, who died on 30.12.2012 leaving behind her heirs and legal representative mentioned in paragraph 4 of the application who are daughter and sons of the deceased respondent 1C. They are major and sui juris and of sound mind. Accordingly, the application for substitution is considered and allowed.

Let the names of the heirs and legal representatives of the deceased respondent 1C Smt. Ashalata Mitra, be incorporated in the cause title of the memorandum of appeal as per their names mentioned in the paragraph 4 of the application.

Accordingly, application being IA No.:CAN/2/2013 (Old IA: CAN/2889/2013) is disposed of.

(Shivakant Prasad, J.)