

2406
2024
MONDAY

Court : 08
Item : DL-01
Matter : FAT
Status : DNP
Bench ID : 266048
Transcriber : NANDY

FAT 700 of 2007
with
CAN 2 of 2024
CAN 3 of 2024

Madhusudan Modak
Vs.
Subhas Chandra Modak

Mr. Joydip Basu, Advocate
Mr. Kaustav Chatterjee, Advocate

..... for the Appellant

Ms. Shila Sarkar, Advocate

.....for the Respondent

CAN 2 of 2024 & CAN 3 of 2024

1. This is an application for substitution of the heirs and legal representatives of the deceased appellant upon setting aside abatement and also on condonation of delay.
2. The sole appellant died intestate on January 30, 2022 leaving behind him the surviving applicants herein, the details whereof is given in paragraph 3 of CAN 2 of 2024. It further appears that the legal representatives as disclosed in the said paragraph are major and *sui juris* and right to sue survived through them.
3. We have further gone into the application for condonation of delay being CAN 3 of 2024 which contains an explanation for delay in taking out an application for substitution upon setting aside abatement, which we find satisfactory.
4. The application for condonation of delay being **CAN 3 of 2024** is hereby **allowed**.
5. Consequently, the application for substitution being **CAN 2 of 2024** also stands **allowed**.
6. The heirs and legal representatives as disclosed in paragraph 3 of CAN 2 of 2024 thereof, be substituted in place and stead of the deceased appellant.
7. At this stage, learned Counsel for the appellant submits

that he has received written instruction from the substituted heirs that they do not intend to proceed with the instant appeal.

8. Let the written-instruction filed in Court today be kept with the record.
9. In view of the above, the appeal being **FAT 700 of 2007** is **dismissed** for **non-prosecution**.
10. Connected applications, if there be any, shall also stand vacated.
11. Office is directed immediately send down the Trial Court Record pertaining to TS 548 of 1997 to the First Court of Civil Judge (Senior Division), Barasat, North 24-Parganas.

(Harish Tandon, J.)

(Prasenjit Biswas, J)