

**IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
APPELLATE SIDE**

**MAT 771 of 2024  
+  
IA NO:CAN/1/2024  
(not in the file)  
+  
CAN/2/2024**

**Neelachal Abasan Cooperative  
Society Ltd.  
Vs.  
Subhrendu Chatterjee & Ors.**

Mr. Debashis Banerjee  
... For the Appellant.

Mr. Debanik Banerjee,  
Mr. Sayak Chakraborti,  
Mr. Wrickbrata Roy  
... For Respondent Nos.1A & 1B.

Mr. Jahar Lal De, learned AGP,  
Mr. Rudranil De  
... For the State.

Mr. Satyajit Talukdar,  
Ms. Rutika Verma  
... For KMDA.

**Re : CAN/1/2024**

This is an application for condonation of delay of 184 days, as per report of the Additional Stamp Reporter, in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 1 of 2024 is, thus, allowed.

**Re : MAT/771/2024 & CAN/2/2024**

By consent of the parties, the appeal and the connecting application are taken up together for hearing and disposal.

A judgment and order dated September 18, 2023, whereby three applications being CAN 1 of 2023, CAN 2 of 2023 and CAN 3 of 2023 passed in connection with WPA 16285 of 1996, were disposed of by a Learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the respondent no.4 in the writ petition.

It appears that the original writ petitioner, namely, Bimalendu Chatterjee, filed the writ petition challenging an order expelling him from membership of the respondent Cooperative Society. The writ petition was dismissed for default on May 6, 2015. Bimalendu passed away subsequently on December 13, 2022.

Thereafter, the two legal heirs of Bimalendu, namely, Subhrendu and Krishnendu, approached the learned Single Judge with three applications, i.e., for restoration of the writ petition, for condonation of delay in filing for restoration and for substitution.

By the judgment and order impugned, the learned Judge allowed all the applications and directed substitution of the legal heirs of Bimalendu in his place and stead. Being aggrieved, the respondent Society has come up by way of this appeal.

Mr. Banerjee, learned advocate, appearing for the appellant Society says that quite apart from the fact that the substituted writ petitioners approached the Court highly belatedly without having any plausible explanation for such inordinate delay, the right to sue did not survive to them upon the death of the original writ petitioner. Hence, the learned Judge ought not to have substituted the legal heirs of the

original writ petitioner as petitioners in the writ petition.

It is true that there was substantial delay on the part of the substituted writ petitioners in approaching the Court. However, relying on certain decisions of the Hon'ble Supreme Court, the learned Judge exercised discretion by condoning the delay, restoring the writ petition and substituting Bimalendu's legal heirs as writ petitioners in the place and stead of Bimalendu.

We do not find such exercise of discretion to be perverse so as to warrant interference. The matter should be decided on merits. The learned Single Judge has also directed exchange of affidavits.

However, on the request of Mr. Banerjee, learned advocate for the appellant, we leave the question of maintainability of the writ petition at the instance of the substituted writ petitioners open for being decided by the learned Judge as a preliminary issue at the final hearing of the writ petition.

We have not dealt upon the merits of the writ petition at all. The writ petition will be decided on its own merits.

The appeal and the connected applications are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

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

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

**(Prasenjit Biswas, J.)      (Arijit Banerjee, J.)**