

11 10.05.2024

Ct-08

ar

SAT 508 of 2018
with
IA No. CAN 1 of 2019(Old CAN No. 10933 of 2019)
CAN 2 of 2023

Md. Musa
Vs.
Md. Belal & Ors.

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder

... For the Appellant

Mr. Mrinal Kanti Ghosh
Mr. Chandra Nath Sarkar

... For the Respondent nos. 5(c) and 5 (e)

1. We have heard the learned counsel appearing for the parties.

2. CAN 2 of 2023 is an application for substitution after setting aside abatement upon condonation of delay. The application has been filed consequent upon the death of the respondent no. 1, namely, Md. Belal, who died intestate on 13.06.2021 leaving behind him the heirs and legal representatives, as described in paragraph 3 of the said application.

3. We accept the explanations offered in the said application for not filing the application for substitution in time and considering the fact that the heirs and legal representatives of the deceased respondent no. 1 are major and sui juris and the

right to sue and be sued survives in favour of such heirs mentioned in paragraph 3 of the substitution Application, we allow the application for substitution after setting aside abatement and condoning the delay of 749 days and direct substitution of heirs and legal representatives of deceased respondent no. 1, as described in the said application instead of and in place of the deceased respondent no. 1.

4. The application being CAN 2 of 2023 is thus disposed of without any order as to costs.

5. Office shall carry out the necessary amendments in the cause title of the Memorandum of appeal, as indicated hereinabove within two weeks from date.

6. The appeal has arisen out of an order passed by the first appellate court in an appeal preferred by the present appellant in a suit for partition. The appellant was aggrieved by the preliminary decree. There is a delay of 137 days in preferring the appeal. Learned Judge dismissed the appeal on the ground of limitation without adjudicating the appeal on merits.

7. We have heard the learned counsel representing the respondent nos. 5(c) and 5(e). The other respondents in spite of notice are not represented.

8. In a suit for partition, we are of the view that the first appellate court ought to have resolved the issue finally, otherwise it would cause inconvenience to all the co-sharers. We have read the application for condonation of delay filed before the first appellate court. We are of the view that the appellant offered sufficient explanations for not being able to file appeal within the period of limitation. In any event, the first appellate court ought to have taken into consideration that the appeal is arising out of a preliminary decree in a suit for partition and without being hyper-technical it is for the benefits of the parties that the disputes are finally decided.

9. We have been informed by the learned counsel for the parties that no step has been taken subsequent to the order passed by the first appellate court dismissing the appeal on the ground of on 5th October, 2018.

10. Since no progress has been made we request the learned Additional District Judge, Fast Track, 4th Court, Alipore, 24 Parganas South to dispose of the Title Appeal No. 217 of 2014 on merits as expeditiously as possible, preferably within period of one year from date of communication of this order we direct the Registrar (L & OM) to

communicate this order to the Ld. Addl. District Judge, Fast Track (4th Court), Alipore 24th Paraganas (South) within a week from date. We also request the learned Court not to give any adjournment to either of the parties unless it is unavoidable.

11.In view of the above, the appeal being SAT 508 of 2018 stands disposed of along with CAN 10933 of 2019.

12.However, there shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)

