

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/375/2024
WITH
EC/293/2015
IA NO: GA/1/2024, GA/2/2024, GA/3/2024
ABRARUL HAQUE
VS
SHAFIUL HAQUE AND ORS.

APOT/376/2024
WITH
EC/293/2015
IA NO: GA/1/2024, GA/2/2024, GA/3/2024
ABRARUL HAQUE
VS
SHAFIUL HAQUE AND ORS.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date : 23rd December, 2024.

Appearance:
Mr. Ranajit Chatterjee, Adv.
Mr. A. Mitra, Adv.

Mr. Arif Ali, Adv.
Ms. Sanchita Chaudhuri, Adv.
Mr. Rahul Kumar Mahato, Adv.

Mr. Ratul Das, Adv.

1. Both the appeals and the connected applications are heard together and disposed of by this common order.
2. Leave in preferring the appeals is allowed.

3. Accordingly, the application being GA/1/2024 in APOT/375/2024 and GA/1/2024 in APOT/376/2024 stand disposed of.
4. There is a delay of 288 days in preferring the appeal being APOT/375/2024 and 369 days in preferring the appeal being APOT/376/2024.
5. It appears that the appellant was not diligent either in pursuing the matter before the learned Single Judge or in preferring the appeal. The impugned order dated 11th October, 2023 clearly shows that the applicant was not represented even in the second call. The learned Single Judge dismissed the application being GA/7/2021 as infructuous on the basis of the submission made on behalf of the respondent nos.3(a) to 3(d) that in view of the subsequent events that had transpired following the filing of the execution proceeding, the said application has become infructuous. It seems that the judgment-debtor does not object to such prayer. The main contention of the present applicant appears to be that Ziaul Haque, since deceased, one of the sons of Shamsul Haque was unsuccessful by challenging the appointment of the present applicant as Mutwalli before the learned Wakf Tribunal and the said Tribunal had rejected the application filed by said Ziaul Haque. It is stated that the interest of the decree-holder has been transferred to the present applicant by operation of law upon his appointment as Mutwalli in Wakf Estate. The prayer for substitution was opposed on the ground that the said respondents were not entitled to represent the estate. The application of the

respondent nos.3(a) to 3(d) for substitution was allowed on 4th September, 2023 on the ground that the judgment-debtor was beneficiary and filed the execution proceeding as a beneficiary. The right to sue was derived on the basis of such status and it appears that the prayer was allowed. However, thereafter the appellant had filed an application for substitution in view of the fact that the said application was dismissed as infructuous without giving an opportunity of hearing to the present appellant. For the ends of justice, we condone the delay and request the learned Single Judge to hear application being GA/7/2021 afresh after giving a reasonable opportunity to the parties to make their submission.

6. Accordingly, the application being GA/2/2024 in APOT/375/2024 and GA/2/2024 in APOT/376/2024 stand allowed and disposed of.
7. We are informed that the application being GA/7/2021 is otherwise ready for hearing. The learned Counsel for the appellant has assured that the appellant shall be present when the matter is called on and make appropriate submission.
8. In view of the aforesaid, the order dated 11th October, 2023 is set aside.
9. The appellant shall pay a sum of Rs.5,000/- as costs to the respondent nos.3(a) to 3(d) on or before 4th January, 2025. In the event the said amount is not paid, the order under challenge shall survive.

10. Accordingly, both the appeals and the connected applications stand disposed of.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)