

15 to 21
25.02.2025
S.D.
Ct. No. 26

M.A.T. 1223 of 2022
With
CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022

Anjan Kumar Roy & Ors.

Vs

JB MD Ibrahim & Ors.

With
F.M.A. 1094 of 2022
With
CAN 1 of 2022
CAN 2 of 2022
With
F.M.A. 902 of 2022
With
CAN 1 of 2024
CAN 2 of 2024
With
M.A.T. 1224 of 2022
With
CAN 1 of 2022
CAN 4 of 2022
With
M.A.T. 1225 of 2022
With
CAN 1 of 2022
CAN 2 of 2022
CAN 3 of 2022
With
M.A.T. 1264 of 2022
With
CAN 1 of 2022
CAN 2 of 2022
With
M.A.T. 1267 of 2022
With
CAN 1 of 2022
CAN 2 of 2022

Mr. Surajit Nath Mitra, Sr. Adv.,
 Mr. Rajarshi Dutta
 Mr. Sarbajit Mukherjee

...for the appellants in M.A.T. 1223 of 2022
 F.M.A. 1094 of 2022
 M.A.T. 1224 of 2022
 M.A.T. 1225 of 2022
 M.A.T. 1264 of 2022
 M.A.T. 1267 of 2022

Ms. Sananda Ganguly
 Ms. Priyanka Gope

..for the appellant in F.M.A. 902 of 2022

Mr. Sk. Md. Galib
 Mr. Abu Siddique Mallik

...for the Board of Waqf, West Bengal

In : **M.A.T. 1224 of 2022 & M.A.T. 1264 of 2022**

Two appeals are at the behest of heirs of a deceased private respondent in a writ petition.

By our earlier order dated February 14, 2025, we recorded the death of the deceased private respondent in the writ petition. We allowed the appellants before us to prefer the appeal from the impugned order dated April 19, 2022 and July 22, 2022 passed in the writ petition.

There is an application under Section 5 of the Limitation Act, 1963 at the behest of the appellant being CAN 1 of 2022.

Since we already allowed the appellants to prefer the appeal, issue of limitation is now no longer relevant.

Be that as it may, we condone the delay in making and filing the appeal by the appellants.

CAN 1 of 2022 is, therefore, disposed of.

CAN 4 of 2022 is an application at the behest of the appellant seeking stay of the impugned order dated July 19, 2022 passed in the writ petition.

Since the writ petition was filed against a private respondent who expired prior to the filing of the writ petition and since the impugned order dated April 19, 2022 was passed against a dead respondent, we hold the order dated April 19, 2022 to be a nullity as against the deceased private respondent and the heirs and legal representatives of such deceased private respondent. Consequently, the impugned order dated April 19, 2022 is a nullity so far as the appellants are concerned who are the legal heirs and representatives of the deceased private respondent in W.P.A. 2665 of 2022.

On such finding, M.A.T. 1224 of 2022 along with the application being CAN 4 of 2022 and M.A.T. 1264 of 2022 along with the application being CAN 1 of 2022 are disposed of without any order as to costs.

In re: M.A.T. 1223 of 2022, M.A.T. 1267 of 2022,
F.M.A. 1094 of 2022 with M.A.T 1225 of 2022

Four appeals directed against orders dated April 19, 2022 and July 22, 2022 passed in W.P.A. 2665 of 2022 are taken up for analogous hearing.

Learned Senior Advocate appearing for the appellants submits that, the order dated April 19, 2022 disposing of the writ petition was passed without notice to his clients. The recalling application of the order dated April 19, 2022 was erroneously decided as against the appellants. He submits that since the impugned order dated April 19, 2022 was declared to be a nullity as against one of the private respondent, interest of justice would be sub-served by setting aside the order date April 19, 2022 and July 22, 2022 passed in the writ petition and on the recalling application respectively and permitting the parties to proceed with the writ petition afresh, on merits.

Waqf of Board is represented.

Since the order dated April 19, 2022 disposing of W.P.A. 2665 of 2022 was passed in a writ petition which contained a private respondent who expired prior to the filing of the writ petition, such order is a nullity as against the heirs and legal representatives of such deceased private respondent. Therefore, in our view, interest of justice would be sub-served by setting aside the order

dated April 19, 2022 passed in W.P.A. 2665 of 2022 and remanding the writ petition for final decision on merits before learned Single Judge.

Since we set aside the order dated April 19, 2022 disposing W.P.A. 2665 of 2022, the order dated July 22, 2022 passed on the recalling application is also set aside.

M.A.T. 1223 of 2022, M.A.T. 1267 of 2022, F.M.A. 1094 of 2022 and M.A.T. 1225 of 2022 along with the connected applications of all the appeals are disposed of without any order as to costs.

Records of W.P.A. 2665 of 2022 be remitted to the learned Single Judge forthwith.

In re: **F.M.A. 902 of 2022**

The appeal is directed against orders dated April 19, 2022 and July 22, 2022 passed in W.P.A. 2665 of 2022 are taken up for analogous hearing.

Learned Advocate appearing for the appellants submits that, the order dated April 19, 2022 disposing of the writ petition was passed without notice to her clients. The recalling application of the order dated April 19, 2022 was erroneously decided as against the appellants. She submits that since the impugned order dated April 19, 2022 was declared to be a nullity as against one of the

private respondent, interest of justice would be sub-served by setting aside the order date April 19, 2022 and July 22, 2022 passed in the writ petition and on the recalling application respectively and permitting the parties to proceed with the writ petition afresh, on merits.

Waqf of Board is represented.

Since the order dated April 19, 2022 disposing of W.P.A. 2665 of 2022 was passed in a writ petition which contained a private respondent who expired prior to the filing of the writ petition, such order is a nullity as against the heirs and legal representatives of such deceased private respondent. Therefore, in our view, interest of justice would be sub-served by setting aside the order dated April 19, 2022 passed in W.P.A. 2665 of 2022 and remanding the writ petition for final decision on merits before learned Single Judge.

Since we set aside the order dated April 19, 2022 disposing W.P.A. 2665 of 2022, the order dated July 22, 2022 passed on the recalling application is also set aside.

F.M.A. 902 of 2022 and the connected applications being CAN 1 of 2024 and CAN 2 of 2024 are disposed of without any order as to costs.

Records of W.P.A. 2665 of 2022 be remitted to the
learned Single Judge forthwith.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)