

1102
2025

TUESDAY

Court : 08
Item : DL 22
Matter : FAT
Status : DNP
Bench ID : 266211
Transcriber : NANDY

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FAT/148/2013
CAN/1/2013(Old No:CAN/7241/2013)
CAN/2/2013(Old No:CAN/7263/2013)
CAN/3/2024, CAN/4/2025

LAND ACQUISITION COLLECTOR,HOOGHLY
VS

ARUN KR. DUTTA & ANR.

MR. SUPRATIM DHAR, SENIOR ADVOCATE
MS. MUNMUN TEWARY, ADVOCATE

.....for the Appellant

MR. JAYDIP KAR, SENIOR ADVOCATE
MR. SUJIT SANKAR KOLEY, ADVOCATE
MR. SWAGATAM DEB, ADVOCATE

.....for the Applicant/Added Party

MS. MAHESWARI SHARMA, ADVOCATE

.....for the Respondent

FAT/148/2013
CAN/4/2025

1. This is a composite application for substitution of the heirs and legal representatives of the deceased respondent no. 1 after setting aside abatement and upon condonation of delay at the behest of the appellant.
2. In course of hearing, Mr. Supratim Dhar, learned Senior Counsel, appearing on behalf of the appellant, draws attention of this Court to paragraph no. 2 of the instant application being CAN 4 of 2025 wherefrom it would reveal that the respondent no. 1, Arun Kumar Dutta, died intestate on 19.03.2017. Attention of this Court is drawn to paragraph no. 4 of the instant application where the appellant has proposed for substitution of the heirs and legal representatives of the said deceased respondent no. 1.
3. It is submitted on behalf of the appellant that from

paragraph 4 onwards sufficient explanation has been given on behalf of the appellant with regard to the delay in filing the instant application for substitution upon setting aside abatement by condoning the delay. It is also submitted by Mr. Dhar that an appropriate order may be passed in the instant application.

4. Per contra, learned Advocate appearing on behalf of the respondents, submits before this Court that by a letter dated 17.04.2022, the information of the death of respondent no. 1 was also communicated. It is further submitted that within the four corners of the application for substitution upon setting aside abatement by condoning the delay, no plausible explanation has been given by the appellant as to why the instant application has been filed at a very belated stage. Learned Advocate for the respondent, thus prays for dismissal of the instant application.
5. We have meticulously gone through the contents of the instant application. We find sufficient merit in the submission of the learned Advocate for the respondent inasmuch as paragraph 3 onwards of the instant application, we find that practically no reason been assigned by the appellant as to what prompted him to file the instant application at a belated stage, especially when it is an admitted position that in the cover of the letter dated 17.04.2022, the information of the death of the respondent no. 1 was communicated and at the same time, the details of the heirs and legal representatives were also furnished.
6. In our considered view, the appellant has miserably failed to explain the delay in filing the application

for substitution and also miserably failed to assign any reason for setting aside the abatement as prayed for.

7. It is trite law that neither leniency nor an encouragement should be given to the litigant who did not take steps within the statutory period of limitation provided therefor. The moment the legislature has promulgated the legislation relating to limitation, the Court while embarking its journey on the periphery of Section 5 of the Limitation Act should also bear in mind the provisions contained under Section 3 of the said Act.
8. Though the respondent no. 1 died as far back as on 07.01.2016 but the communication was made by Counsel on 17.04.2022, much after the period of limitation having intervened in the meantime. We could have appreciated if the application for setting aside abatement upon condonation of delay is taken by the appellant immediately after receiving such communication dated 17.04.2022 but we find that despite having knowledge of the death of the said respondent; the instant application is filed on 03.01.2025.
9. There is no explanation offered in the said application on the delay occasioned after the said communication is made. Unless the Court finds sufficient explanation having offered inviting condonation of delay, should not in the garb of the leniency take a pragmatic view to encourage belated application which does not deserve to be allowed.
10. We are conscious of the proposition of law that the length of delay is immaterial. What is required, is the sufficiency of cause as the delay of shorter

period may not be condoned yet delay of longer period may be condoned if the Court is satisfied that the said delay was occasioned for a reason beyond the control of the litigant.

11. Mr. Dhar tried to impress this Court that the delay in filing an application was occasioned due to lack of information whether the heirs and legal representatives of the said deceased are *sui juris* or of sound mind. The Court decides the matter on the basis of a pleading as it assumes importance in an adversarial system of adjudication. The statement made at the Bar uncorroborated by a pleading, should not be encouraged and it is the responsibility of the member of the Bar to argue the case founded upon facts provided such facts are pleaded in the said application. It would encourage the litigant if the arguments are advanced on a fact which does not germane from the pleading for the simple reason that the other side may be put on surprise and may not be in a position to controvert the same.
12. The moment the appellant found that the pleading is insufficient, recently a practice has developed to pray for supplementary affidavit to be filed so as to improve the case which in our view should not be encouraged as it simply augments procrastination of the litigation.
13. We thus hold that the composite application being **CAN 4 of 2025** is devoid of merit and thus stands **dismissed**.
14. In view of the order passed hereinabove, the instant appeal being **FAT 148 of 2013** hereby stands **abated and dismissed**.
15. Interim order, if there be any, stands recalled.

16. In view of the dismissal of the appeal being abated, the application seeking addition of parties, has become infructuous and accordingly dismissed.
17. Department is directed to send down the Trial Court Record along with the copy of this order forthwith.
18. Consequently, the prayer for substitution, prayer for setting aside abatement and prayer for condonation of delay hereby stands rejected.

(HARISH TANDON, J.)

(PARTHA SARATHI SEN, J)

21
22
23

FAT/149/2013
LAND ACQUISITION COLLECTOR,HOOGLHY
VS
SANTIMOYEE DUTTA
IA NO: CAN/1/2013(Old No:CAN/7242/2013), CAN/2/2013(Old No:CAN/7264/2013),
CAN/3/2024, CAN/4/2025