

08.07.2025
SI No.6
Court No.8
(gc)

FA 221 of 2012
CAN 1 of 2012 (Old No: CAN 10190 of 2012)
CAN 2 of 2021
CAN 3 of 2021
CAN 4 of 2021
CAN 5 of 2022

Sk. Badsa Alam
Vs.
Mst. Asra Khatun & Anr.

Mr. Mohammad Mahmud
...for the Appellant/Applicant.

Soumen Sen, J. (Oral):

1. In spite of service, the respondents are not represented.
2. All the applications are taken up together for consideration. CAN 2 of 2021 is an application for condonation of delay of 1676 days, CAN 3 of 2021 is an application for substitution of the legal heirs of the appellants, CAN 4 of 2021 is an application for setting aside of abatement and restoration of the appeal and CAN 5 of 2022 is for substitution of the names of the legal heirs and representatives of few of the respondents.
3. We have carefully perused the record and it appears that no step was taken by the appellant for substitution of the legal heirs of the original respondent no.3. Moreover, it appears that the appellant died on 5th November, 2013 and no application was filed for substitution by the legal heirs of the

appellant till 9th March, 2021. On that date, other applications were filed either for setting aside of abatement or for substitution of legal heirs of the respondents.

4. There is an inexcusable delay in filing the application for recalling of the order passed by the Bench presided over by Hon'ble Manjula Chellur, the then Chief Justice of the High Court at Calcutta. In fact, twice opportunity was given to the appellant to put in the requisites for effecting service of notice of appeal on the respondents by registered post and in spite of such extension of time, no postal cost with correct postal address of the respondents and written up notice forms were put in. In fact, the appeal was admitted on 7th February, 2013 when such directions were passed for put in requisites within ten days from that date. Since the said order was not complied with, the matter was placed for final order in which the following order was passed on 12th April, 2016:-

“Finally one week time is granted to comply with the office objections, failing which this appeal shall stand dismissed automatically without further reference to Bench.”

5. Thereafter, due to non-compliance of the aforesaid order the Registrar (Administration) on 2nd May, 2016 recorded formally the order of

dismissal of the appeal in terms of the order dated 12th April, 2016. In fact, the present applicants claiming to be the legal heirs of the original appellant ought to have taken out an application for substitution soon after the original appellant died on 5th November, 2013.

6. We do not find any plausible explanation for not taking any steps either to bring on record the legal heirs of the appellant or taking steps for substitution of the legal heirs of the respondents. Moreover, the order admitting the appeal has clearly directed compliance of certain formalities for expeditious disposal of the appeal.
7. In view of the order of dismissal of the appeal, the order of status quo no more survives and the situation as on date may be irreversible taking into consideration the finding of the learned Trial Court that the original plaintiff's claim for four cents of land of suit plot no.1653 from Sk. Johad by virtue of Exhibit 3(a) could not be proved. It was a clear finding of the learned Trial Court that the right, title and interest of Sk. Johad and also of Sk. Osman, the predecessors-in-interest of the plaintiff over the suit property have not been proved, therefore, by virtue of Exhibit 3 and Exhibit 3(a), no right,

title and interest has been conveyed to the plaintiff over the suit property.

8. In view of the aforesaid, we are not inclined to condone the delay.
9. The application for condonation of delay, being CAN 2 of 2021, is dismissed.
10. In view of dismissal of the application for condonation of delay, the appeal and the connected applications are dismissed.
11. However, there shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)