

D/L.3.
June 11, 2025.
MNS.

FMAT No. 1125 of 2017
+
CAN 1 of 2017 (Old CAN 12177 of 2017)
+
CAN 2 of 2025

Md. Mostafa and others
Vs.
Habiba Bibi and others

Mr. Prosenjit Mukherjee,
Ms. Babita Pramanik

... for the appellants.

Mr. Amal Kumar Banerjee

...for the respondents.

1. The present application, bearing CAN 2 of 2025, has been filed as a composite application for substitution of the heirs and legal representatives of the deceased appellant no. 2 after setting aside abatement on condonation of delay.
2. We find from the explanation sought to be furnished, particularly in paragraph nos. 4 and 5 of the present application, that the grounds for the substantial delay of 520 days in preferring the application are flimsy.
3. The appellants have stated that they reside in a remote village and suffered from depression due to the sudden death of appellant no. 2 and did not take any steps for substitution within time. It is also pleaded that due to lack of knowledge and as they

are residing in a remote area, the appellants could not contact with their learned Advocate in time and ultimately after getting a 'no objection', handed over the documents to the present learned Advocate.

4. Insofar as the alleged depression is concerned, unless depression of a clinical nature, so severe that a person is confined to his home, is established, we cannot accept a general plea of depression on the demise of one of the appellants as a ground for condoning the prolonged delay of 520 days.
5. We cannot also accept the 'lack of knowledge' part of the explanation, since from the affidavit in support of the application, we find that the appellant no. 1/defendant no. 1, who has affirmed the application, is himself a practising advocate in the Rampurhat Court.
6. Thus, it cannot, by any stretch of imagination, be said that a practising advocate is unaware of the requirement to file a substitution application in time.
7. Moreover, as rightly pointed out by learned counsel appearing for the respondents, it is one of the appellants, that is, appellant no. 2, the brother of the other appellants, who met his demise, necessitating the present application. Hence, the surviving appellants were aware of such demise all along.

8. We also find that the address of the surviving appellants is the same as that of the deceased appellant.

9. Hence, there is no conceivable pretext for the inordinately long delay of 520 days in preferring this application.

10. Since the claim of the parties indicates that title to the suit property was claimed jointly by the appellants, the appeal, accordingly, must abate as a whole.

11. Hence, CAN 2 of 2025 is dismissed on contest.

12. Consequentially, we record that FMAT No. 1125 of 2017 is disposed of as abated.

13. The other connected pending application(s), if any, stands disposed of as well.

14. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)