

S/L **82**
21.04.2026
Court No.655
B.K.N

S.A. 583 of 2008
With
CAN 4 of 2011 (Old No. CAN 3515 of 2011)
CAN 5 of 2016 (Old No. CAN 7550 of 2016)
CAN 6 of 2024
Sri Tirthabashi Paul
Vs.
Bimal Chandra Dutta, Since Deceased, rep. by his legal
heirs Bidhan Dutta & Ors.

Mr. Jayanta Das,
Ms. Soumita Ghosh

...for the Respondents.

1. Nobody is present on behalf of the appellant.
2. Learned advocate representing the respondents is present.
3. It is submitted by the learned Advocate appearing on behalf of the respondents that, in compliance with the direction passed by this Court on 19.09.2025, earnest steps were taken to apprise the learned Advocate for the appellant of the date fixed for hearing of the present appeal. However, despite such bona fide efforts, the respondents could not successfully communicate the said information to the appellant's side. Consequently, a notice was caused to be sent to the appellant by registered post at the address available on record. Significantly, the postal envelope containing such notice was returned undelivered with the endorsement "deceased," thereby indicating that the sole appellant was no longer alive at the relevant point of time.
4. Building upon the aforesaid factual foundation, it is further contended on behalf of the respondents that the

sole appellant had, in fact, expired on 31st May, 2016, during the pendency of the present appeal. Despite such death, no steps whatsoever have been taken by the heirs and/or legal representatives of the deceased appellant to bring themselves on record by way of substitution within the period prescribed under law. The statutory scheme, as embodied in the relevant provisions governing substitution of parties, casts a clear obligation upon the legal representatives of a deceased litigant to apply for substitution within the stipulated period, failing which the proceeding cannot continue in its existing form.

5. It is a settled principle of law that, upon the death of a sole appellant, the right to sue survives only if the legal representatives are duly brought on record within the time prescribed. In default of such substitution, the appeal does not remain in a state of suspended animation; rather, it suffers the consequence of abatement by operation of law. Such abatement is automatic and does not depend upon any formal declaration by the Court. The moment the prescribed period for substitution expires without any application being made, the appeal stands abated as a matter of legal consequence.
6. In the present case, since no application for substitution has been filed by the heirs or legal representatives of the deceased sole appellant within the statutory period, the appeal has, by operation of law, abated in its entirety. The failure to take timely steps for substitution is fatal to

the continuation of the appeal, and in the absence of any application for setting aside such abatement accompanied by sufficient cause; the appeal cannot be revived or proceeded with.

7. Accordingly, the present appeal is abated due to non-substitution of the legal representatives of the deceased sole appellant within the time prescribed and is liable to be dismissed as such.
8. Accordingly the instant appeal be and the same is hereby **dismissed as abetted**.
9. Consequently the interim order, if any, passed by this Court hereby stands vacated.
10. Decree to be drawn up accordingly.
11. Let a copy of this order along with the Trial Court record be sent down to the Trial Court immediately.
12. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Prasenjit Biswas, J.)