

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FMA 131 of 2026

Sri Deepak Kumar Ganeriwala
Vs.
Cascade Commerce Private Limited
represented by its Directors Jaswant Singh and Ors.

For the appellant	:	Mr. Rachit Lakhmani, Mr. Emon Bhattacharya, Mr. Subhankar Dutta
For the respondent no. 1	:	Mr. Sourojit Dasgupta, Mr. Asish Choudhury, Mrs. Uma Bagree
Heard on	:	17.02.2026
Judgment on	:	17.02.2026

Sabyasachi Bhattacharyya, J.:-

1. The ambit of the present appeal is short. As such, we admit the appeal and take it up for hearing on consent of the parties.
2. In a suit for specific performance of contract, the plaintiff/appellant took out an application for substitution of

the heirs and legal representatives of one of the deceased defendants, being defendant no. 1.

3. By the impugned order, the said application, along with the connected application for condonation of delay, were dismissed outright on the ground that the application for substitution had not been filed as a miscellaneous case.
4. Learned counsel for the appellant submits that in the event the learned Trial Judge was of such opinion, liberty ought to have been granted to the appellant to take out an appropriate application as a miscellaneous case.
5. Learned counsel appearing for the respondent no. 1 submits that in the concluding portion of the impugned order, the learned Trial Judge recorded that since the plaintiff has prayed relief jointly against defendant nos. 1 and 2, death of defendant no. 1 leads to abatement of the suit as a whole, since there is no separate relief prayed against defendant no. 2. It is thus contended that the said portion of the impugned order pertains to the merits of the case.
6. However, upon considering the impugned order, we find that the concluding portion of the impugned order, contrary to the suggestion made by learned counsel for the respondent, is not an independent finding but a mere consequence of the earlier rejection of the application for substitution along with the connected application for condonation of delay.

- 7.** Since the very premise of the rejection was improper and hyper-technical, this Court is of the opinion that the impugned order ought to be set aside and leave is to be granted to the appellant to file a fresh application for substitution of the heirs and legal representatives of the deceased defendant no. 1 along with an application for condonation of delay.
- 8.** Such application has to be filed in the format of a miscellaneous case.
- 9.** Accordingly, FMA 131 of 2026 is allowed on contest, thereby setting aside the impugned order bearing Order dated November 12, 2025 passed by the learned Civil Judge, Senior Division, First Court at Alipore, District - South 24 Parganas in Title Suit No. 62 of 2011 and granting liberty to the plaintiff/appellant to file a fresh application for substitution of the heirs and legal representatives of the deceased defendant no. 1, along with a connected condonation application and application for setting aside abatement. If such an application for substitution is filed, the same will be registered as a miscellaneous case by the concerned department of the Trial Court and thereafter shall be taken up by the learned Trial Judge for adjudication, along with the connected applications, on merits upon giving opportunity of hearing to both sides.
- 10.** It is made clear that the merits of the applications to be filed have not been gone into by this Court.

- 11.** There will be no order as to costs.
- 12.** The parties and all concerned shall act on the server copy of this order, duly downloaded from the official website of this Court.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

AD-49
SSS