

**In the court of Ld. Addl. District Judge (FTC), Kalna.
District- Purba Bardhaman.**

Title Appeal No. 08/2018

**Present – Nachiketa Bera,
Additional District Judge (FTC),
Kalna, Purba Bardhaman.**

Order No. 44/dated – 07.11.2022..... Today is fixed for order in respect of petition for substitution u/o 22 rule 3 CPC along with a petition u/s 5 of the Limitation Act.

The respondent though appeared in this case but subsequently remained absent and hence the petitions were heard in their absence.

Accordingly, the record is taken up for passing order.

The Ld. Advocate for the appellant have already been heard regarding the petitions. During hearing the Ld. Advocate submitted that the appellant Uday Chand Sarkar died on 27.08.2020 leaving behind his wife Smt. Bimala Sarkar and his son Saikat Sarkar as his legal heirs. He has also filed the death certificate of Uday Chand Sarkar indicating his date of death as 27.08.2020 . He also submitted that he filed this application on 02.09.2021 i.e. almost after one year of his death and he has prevented from intimating this court regarding the death of the appellant due to pandemic situation and thus he prayed for condonation of delay as per the section 5 of the Limitation Act. He further submitted that there is no legal bar in allowing the petition for substitution u/o 22, rule 3 CPC since the legal representatives of the deceased/appellant have got right to sue against the defendant and moreover the instant suit against which the appeal has been preferred is a suit for declaration of share and partition.

With regard to the petition under section 5 of the Limitation Act as filed by the Ld. Advocate for the appellant, I find that the ground as stated by the appellant in the said petition appears to be cogent and satisfactory since pandemic situation owing to outbreak of Covid 19 was prevailing between the date of death and filing of petition and as such I do not find any reason to disallow the petition for condonation of delay under section 5 of the Limitation Act. Accordingly the petition for condonation of delay under section 5 of the Limitation Act. Accordingly the petition is hereby allowed exparte after due consideration.

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With regard to the petition for substitution u/o 22, rule 3 CPC I find that the appellant Uday Chand Sarkar died on 27.08.2020 leaving behind his legal heirs his wife Bimala Sarkar and his son Saikat Sarkar. The date of death of Uday Chand Sarkar is evident from the photo-copy of his death certificate as submitted by the Ld. Advocate.

Accordingly, the said two legal heirs have got the right to sue against the respondent after the demise of Uday Chand Sarkar.

Considering the facts and circumstances of the case and on a careful scrutiny of the provision of order 22, rule 3 CPC I find no legal impediment in allowing the petition for substitution filed by the Ld. Advocate for the appellant. Hence, the petition is allowed exparte.

Accordingly, Bimala Sarkar and his son Saikat Sarkar be substituted in place of Uday Chand Sarkar in the memo of appeal.

Bench clerk to do the needful.

To 17.01.2023 for hearing and compliance.

Dic. & Cor. By me,

Sd/-
Additional District Judge,
Kalna, Purba Bardhaman.

Sd/-
Additional District Judge,
Kalna, Purba Bardhaman