

Present : Shri B. Bhattacharjee (JO-WB00640)
District Judge, Murshidabad

Order No. 29 dated 01.02.2024

Ld. Advocates of the respective parties are present by filing haziras.

On consent of both the parties, the petition, filed by the appellants under Order 41 Rule 3(A) of C.P.C. read with Section 5 of Limitation Act is taken up for hearing.

At the very outset, the Ld. Advocate, appearing for the respondents frankly submitted that he has got no objection if the application U/s.5 of Limitation Act is allowed on consent without going into the merit of the application.

On the other hand, the Ld. Advocate, appearing for the appellants, prays for condonation of delay in filing of the instant appeal by way of allowing the instant application dated 28.09.2016, filed under Order 41 Rule 3-A of C.P.C., read with Section 5 of Limitation Act.

Having heard the Ld. Advocates, appearing for the respective parties, without going into the merit of the application and on consent of the respondents, I am inclined to allow the petition U/s.5 of Limitation Act for the ends of justice.

Hence, it is

Ordered

that application dated 28.09.2016, filed under Order 41 Rule 3-A of C.P.C., read with Section 5 of Limitation Act, praying for condonation of delay of 2 years 11 months and 14 days, is allowed on consent without cost.

The delay of 2 years 11 months and 14 days in filing the appeal is hereby condoned.

The instant Misc. case being No.46 of 2022 is accordingly disposed of.

Dictd. & Cortd.
by me.

D. J.

District Judge, Murshidabad

Later Order dated 01.02.2024

This day is fixed for hearing the petition for substitution, filed by the appellants.

Ld. Advocates, appearing for both the parties are present.

The Misc. case has arisen out of the Misc. Appeal No.8/2017 and has been filed by the petitioners as a Misc. appeal against the petitioners has abetted since they failed to substitute their names within the limitation of demise of the respondent No.2 Hazi Md. Hasan Ali.

The prayer is supported by affidavit.

Both the parties have submitted that they have waived their respective rights to adduce any evidence on the matter.

The application under Order 22 Rule 9 of C.P.C., praying for setting aside the order of abetment is supported by affidavit.

It has been submitted that on account of the peculiar circumstances, existing during COVID period, these petitioners have failed to substitute their names in place of the respondent no.2, on his demise.

Cont...Later Order dated 01.02.2024

Considering the submission of the parties and also considering the circumstances prevailing during COVID period and for the interest of justice, I am inclined to allow the prayer for setting aside of the order of abetment.

Hence, it is

Ordered

that the petition dated 29.08.2022 under Order 22 Rule 9 of C.P.C. is considered and allowed on consent, without cost.

Let the name of the petitioners be substituted in place of the deceased respondent No.2 Hazi Md. Hasan Ali in the Cause-title of the Memo of appeal.

Office is to comply.

Note in the relevant register.

The instant application is thus disposed of.

Dictd. & Cortd.
by me.

D. J.

District Judge, Murshidabad

Misc. Appeal 8/2017

Present : Shri B. Bhattacharjee (JO-WB00640)
District Judge, Murshidabad

Order No. 30 dated 01.02.2024

Ld. Advocates of the respective parties are present by filing haziras.

The prayer for setting aside the abetment has since been allowed, then there is no impediment to allow the application filed by the appellants dated 24.08.2022, praying for substitution of the names of the applicants in place of the deceased Respondent No.2 namely, Hazi Md. Hasan Ali.

Let the name of the petitioners be substituted in place of the deceased respondent No.2 Hazi Md. Hasan Ali in the Cause-title of the Memo of appeal.

Office is to comply.

Note in the relevant register.

The instant application is thus disposed of.

Dictd. & Cortd.
by me.

D. J.

District Judge, Murshidabad

Later Order dated 01.02.2024

Ld. Advocates of the respective parties are present.

This day is fixed for hearing the petition dated 15.12.2023, filed by the legal heirs of the deceased appellant Sayed Ali Reja, praying for substituting their names in place of the deceased appellant Sayed Ali Reja and the same is taken up for hearing.

Perused the petition dated 15.12.2023 and also the case record. Heard the Ld. Advocates, appearing for the respective parties.

Considered.

It appears that the sole appellant Sayed Ali Reja died on 21.10.2023 and the instant application has been filed by the petitioners who are the legal heirs of the deceased appellant Sayed Ali Reja on 15.12.2023 which is well within the time and in view of the above, I am inclined to allow the petitioner.

Hence,

O r d e r e d

that the petition dated 15.12.2023, filed by the petitioners, praying for substitution is allowed on contest, without cost.

Let the name of the petitioners be substituted in place of the deceased appellant Sayed Ali Reja in the Cause-title of the Memo of appeal.

Office is to comply.

Note in the relevant register.

Appellants are directed to file amended copy of Memo of appeal by the next date fixed positively.

Dictd. & Cortd.
by me.

D. J.

District Judge, Murshidabad

Later Order dated 01.02.2024

Now, the petition, filed by the appellants under Order 41 Rule 3(A) of C.P.C. read with Section 5 of Limitation Act is taken up for hearing.

At the very outset, the Ld. Advocate, appearing for the respondents frankly submitted that he has got no objection if the application U/s.5 of Limitation Act is allowed on consent without going into the merit of the application.

On the other hand, the Ld. Advocate, appearing for the appellants, prays for condonation of delay in filing of the instant appeal by way of allowing the instant application dated 29.08.2022, filed under Order 41 Rule 3-A of C.P.C., read with Section 5 of Limitation Act.

Having heard the Ld. Advocates, appearing for the respective parties, without going into the merit of the application and on consent of the respondents, I am inclined to allow the petition U/s.5 of Limitation Act for the ends of justice.

Hence, it is

O r d e r e d

that application dated 29.08.2022, filed under Order 41 Rule 3-A of C.P.C., read with Section 5 of Limitation Act, praying for condonation of delay of 2 years 11 months and 14 days, is allowed on consent without cost.

The delay of 2 years 11 months and 14 days in filing the appeal is hereby condoned.

The instant Misc. case being No.46 of 2022 is accordingly disposed of.

Now, the appeal is taken up for hearing on the point of admission.

The appellants have preferred this appeal against the order dated 31.05.2016, passed in Misc. case No.47/2003 by the Ld. Civil Judge (Jr. Divn.), 2nd Court, Berhampore, Murshidabad.

Perused the memo of appeal including the certified copy of the impugned Judgment and order.

Heard the Ld. Advocate, appearing for the appellants.

Considered.

Let the instant appeal be admitted.

Call for the L.C.R.

Issue notice upon the respondents accordingly.

Requisites be filed at once.

Fix 15.02.2024 for S.R., A.D., L.C.R. and filing amended copy of Memo of appeal.

Dictd. & Cortd.
by me.

D. J.

District Judge, Murshidabad