

04.03.2021
Ct. No.9
S/L No.2
SD/KS

S.A. 714 of 1975
+
IA No. CAN 1 of 2019 (Old No. CAN 3771 of 2019)
+
IA No. CAN 2 of 2019 (Old No. CAN 3776 of 2019)
+
CAN 3 of 2021
+
CAN 4 of 2021

Satyendra Narayan @ Satyendra Narayan Agarwal
-Vs.-
Balika Shiksha Parishad & Ors.
(Via Video Conference)

Mr. Surajit Nath Mitra
Mr. Sankarsar Sarkar
Ms. Saheli Sen

.....For the Appellant

Mr. V. V. V. Sastry

.....For the Proposed Respondents to be added

Mr. G. K. Khaitan

.....For the Respondent

IA No.CAN 1 of 2019 (Old No.CAN 3771 of 2019)

This is an application for condonation of delay in applying for substitution of the heirs of the deceased appellant, namely, Promode Kumar. It is submitted that during pendency of the appeal one of the member of the joint Hindu Undivided Family, Jatindra Narayan Agarwal had died intestate on January 19, 1975. Upon the death of said, Jatindra Narayan Agarwal an application made and numbered as C.R.R. No.122 of 1977 for substitution of the heirs of the deceased appellant

vide order dated January 13, 1977 was allowed. The heirs of Jatindra Narayan Agarwal namely, Pradeep Kumar and Promode Kumar, being the sons and the widow, Gulab Mani Devi were substituted and noted in the Memorandum of Appeal.

Now, it is submitted on behalf of the applicants that the said Pramode Kumar died intestate on September 19, 2018, leaving behind the applicants as his heirs and legal representatives to succeed but the fact is that they were not in the knowledge of the present appeal as they alongwith their father late Pramode Kumar since deceased were not living in Kolkata and have been living in Bangalore since 2004. Upon the said death of Pramode Kumar, while going through the belongings of the deceased, Pramode Kumar, some of the documents pertaining to the present appeal came to the notice of applicants and then engaged their advocate on record to take necessary steps in the matter. Accordingly, the applicants have prayed for the substitution of their names in place and stead of the said deceased, Pramode Kumar one of the substituted appellant in the proceedings of the appeal.

In the said background, there has been delay of 202 days in filing of the application for substitution of the names of the

applicants in place and stead of the said deceased, Pramode Kumar beyond their control.

Having considered the averments so made in the application the delay of 202 days be condoned and abatement of the suit as against them stands set aside because the suit abates by operation of law, if the substitution is not taken out within the statutory period of 90 days.

Thus, the application being, IA No. CAN 1 of 2019 (Old No. CAN 3771 of 2019) is disposed of.

IA No. CAN 2 of 2019 (Old No. CAN 3776 of 2019)

This is an application for substitution under Order XXII of the Code of Civil Procedure is taken up for consideration.

In view of the aforesaid order, it appears that during the pendency of the instant appeal one of the members of the Joint Hindu Undivided Family Jatindra Narayan Agarwal had died intestate on January 19, 1975 and the heirs and legal representatives were substituted by the order dated January 13, 1977 by recording the death of Jatindra Narayan Agarwal and substituted his heirs namely Promode Kumar and Pradeep Kumar the sons and his widow namely, Gulab Mani Devi who were substituted in place and in stead of the deceased appellant.

Now, it is submitted on behalf of the applicants that they are major, sui juris and of sound mind although, there is no specific averment made in the application.

Having condoned the delay of 202 days in preferring an application for substitution of the heirs of the deceased appellants, let the names of the applicants named in the cause title of this application be noted in the Memorandum of Appeal. The Department is directed to carry out necessary amendment.

The application being, IA No. CAN 2 of 2019 (Old No. CAN 3776 of 2019) is disposed of, however, without any order as to costs.

The application being CAN 3 of 2021 for condonation of delay in preferring the appeal and the application being CAN 4 of 2021 for substitution be listed three weeks hence.

Mr. V.V.V. Sastri, learned Advocate appearing on behalf of the proposed respondents, namely Nirmal Khaitan and Girish Khaitan, who have been proposed to be substituted in the Memorandum of Appeal by virtue of the substitution application, submits for accommodation of time to file affidavit-in-opposition against these two applications.

Considered.

Let three weeks time be given for filing affidavit-in-opposition. Reply, thereto, if any, be given within one week thereafter.

List the matter four weeks hence under the heading "For Hearing".

Parties may take copy of the Memorandum of Appeal from the department upon necessary costs, if applicable.

Registrar Administration (L & O.M.) will report to this Court on the returnable date the status of this appeal.

Let the entire records be placed before the Registrar Administration (L & O.M.) for necessary action.

(Shivakant Prasad, J.)