



S/L 6.
16.03.2021
S.D.

S.A. 267 of 2008
with
CAN 3 of 2019 (Old CAN No. 6595 of 2019)
CAN 4 of 2019 (Old CAN No. 12520 of 2019)
CAN 5 of 2019 (Old CAN No. 12521 of 2019)
Mannan Sk. & Ors.
Vs.
Rohit Sekh & Ors.

Mr. Jiban Ratan Chatterjee, Sr. Adv.,
Mr. Debnarayan Patra
Ms. Shetparna Roy
...For the Appellants.

Md. Yamin Ali For the Respondents.

In re: **CAN 4 of 2019 (Old CAN No. 12520 of 2019) &**
CAN 5 of 2019 (Old CAN No. 12521 of 2019)

Both the applications are conjointly taken up for hearing and consideration.

An application under Section 5 of the Limitation Act, 1963 has been filed for condonation of delay in filing of application for substitution beyond the period of limitation in respect of the deceased plaintiffs/respondents upon setting aside the abatement under the provision of Order 22 Rule 9(2) of the Code of Civil Procedure.

It is submitted that the Second Appeal was admitted and numbered as S.A. 267 of 2008. On 17.4.2019, at the time of hearing, learned Advocate for the plaintiffs/respondents



informed that some of the plaintiffs being the plaintiffs/respondents nos. 1, 4 and 5 had died during the pendency of the appeal, but without mentioning the date of death of said deceased and their heirs. Times were given by the Hon'ble Court to substitute the heirs of the deceased plaintiffs/respondents with the direction upon the plaintiffs/respondents to cooperate with the appellants for taking proper steps as regards the deceased respondents. Finally in the month of November 2019, the defendants/appellants gathered information from the plaintiffs/respondents about the particulars of the heirs and representatives of the deceased respondents. It is submitted that during the pendency of the Second Appeal, the plaintiff/respondent no. 1, Rahit Sekh died on 16.4.2009 leaving behind the heirs as mentioned in paragraph 8 of CAN 12521 of 2019. The names of the heirs of the deceased respondent no. 4, Raisuddin Sk. has been mentioned who have died on 25.7.2015 during the pendency of the Second Appeal as per paragraph no. 9. Similarly, during pendency of the appeal, respondent no. 5, Sovan Sk. died leaving behind his heirs mentioned in paragraph 10 of the application. It is also pointed out that the respondent no. 6



Chamatkar Sk. died on 1.6.2019 leaving behind his heirs mentioned in paragraph 11 of the application.

The heirs and legal representatives of the deceased plaintiffs/respondents are adult, sound mind and competent to be sued and sue and *sui juries*.

Having heard the learned Advocate for the parties and in consideration of both the applications noted above, let the names of heirs of the deceased plaintiff/respondent no. 1 as mentioned in paragraph 8 and the heir of deceased respondent no. 4 mentioned in paragraph 9, the heir of deceased respondent no. 5 mentioned in paragraph 10 and heir of deceased respondent no. 6 mentioned in paragraph 11 be substituted in place and stead of the deceased respondents aforesaid by setting aside the abatement as against them upon condonation of delay.

Now, the department is directed to incorporate the names of respective heirs of the deceased respondents and note the Memorandum of Appeal and to carry out the necessary amendments.

The appellants are directed to serve the notice of appeal to the substituted respondents.



Thus, the applications being CAN 4 of 2019 (Old CAN 12520 of 2019) and CAN 5 of 2019 (Old CAN 12521 of 2019) are disposed of.

No order as to costs.

In re: **CAN 3 of 2019 (Old CAN 6595 of 2019)**

This is an application for restoration of the Second Appeal on recalling of the order of dismissal dated 26.6.2019 and the same was disposed of by this Court on 10.2.2021. Therefore, no further order need be passed.

Let the matter appear in the monthly list of April 2021.

Urgent certified copies of this order, if applied for, be given to the parties upon compliance of the usual formalities.

(Shivakant Prasad, J.)