

28.04.2025
Ct. no.655
Sl. No. 49
Nandita

**SA 172 of 2000
With
CAN 1 of 2024
With
CAN 2, 2024
With
CAN 3 of 2024
With
CAN 4 of 2024
With
CAN 5 of 2024**

**Smt. Laxhmi Rani Dey & Ors.
Vs.
Smt. Gita Dey & Ors.**

Mr. Rabindra Nath Mahata,
Mr. Aritra Sarkar

... for the Appellants

Mr. Animesh Das

... for the Respondent No. 3

In Re: CAN 2 of 2024

1. Appellant is represented by the learned Advocate.
2. Learned Advocate on behalf of the respondent no. 3 is present.
3. This application was taken out at the behest of the appellant with a prayer for restoration of the appeal. It is submitted by the learned Advocate for the appellant that as no order of dismissal was passed in Lazima, so the present application for restoration of the appeal becomes infructuous.

4. Accordingly, the application being CAN 2 of 2024 is **dismissed as not pressed.**

In Re: CAN 3 of 2024

1. This is an application filed on behalf of the appellant seeking for exemption from substituting the heirs/legal representatives of the deceased respondent no. 4 Smt. Ava Rani Chakraborty.
2. Learned Advocate for the respondent no. 3 is present.
3. It is stated at paragraph no. 4 of the application that since this defendant no. 4 did not contest the suit and/or appeal, so there is no requirement to substitute her heirs/legal representatives on the event of her death as per provision of Order 22 Rule 4(4) of the Code of Civil Procedure.
4. the legislature has put two conditions while applying the provisions of Order 22, Rule 4 (4), and they are - - (1) that the provision will apply in a case where a defendant has failed to file a written statement, or he having filed it, has failed to appear and contest the suit at the hearing, (2) that this provision will apply where no order of abatement has been recorded by the Court, then the provisions of Order 22, Rule 4(4) shall not apply. If the aforesaid conditions are fulfilled, the

Court can apply provisions of Order 22, Rule 4(4) at any time before delivery of judgement.

5. In the present case, the admitted position is that the defendant no. 4 had not filed the written statement. She is also did not appear to contest the suit. It is also an admitted position that an abatement order in respect of the death of defendant no. 4 had not been recorded by the Trial Judge. In the present case, these conditions have been satisfied and, as such, it would be justified in law in dispensing with substituting the legal heirs of defendant no. 4 under sub-Rule (4) Order 22, Rule 4 of the Civil P.C.

6. As such there is no impediment the allowing the application.

7. Accordingly, the application being CAN 3 of 2024 is hereby **allowed** and disposed of.

In Re: CAN 5 of 2024

1. This is an application filed by the appellant with a prayer for taking note of death of the original respondent nos. 1 and 2 and with giving a further note that the petitioner nos. 2 and 3 became major and subjuris.

2. Learned Advocate for the respondent no. 3 is present.

3. It is stated paragraph no. 13 of the application that these petitioners/appellants have come to know that the respondent no. 1 and the respondent no.2 died in the year 2011 and 2007 respectively without leaving any heirs/legal representatives.

4. Under such circumstances the death of the original respondents no(s) 1 and 2 are required to be taken note of.

5. Department is directed to make necessary note in the cause title of memo of appeal.

4. It is further stated in the petition that during pendency of the appeal petitioner nos. 2 and 3 attained majority and becomes sui juris and this fact is required to be taken note of.

5. There is no impediment in allowing this prayer and a note is to be given in the cause title of the memo of appeal.

6. Department is further directed to make necessary note in the cause title of memo of appeal in this respect.

7. The application being CAN 5 of 2024 is **allowed** and disposed of.

In Re: CAN 4 of 2024

1. This is an application seeking of addition of party. The parties were sought to be added as party respondents no(s) 5 to 7 in the instant appeal.

2. The appellants are directed to serve the copy of this application upon the proposed respondents no(s) 5 to 7 and file affidavit of service on the returnable date.

In Re: CAN 1 of 2001

1. Although, this application is listed for hearing but it is submitted that application has already been disposed of by this Court, on 30.03.2001. So, the listing of the application in connection with this appeal becomes infructuous.

In Re: SA 172 of 2000

Let the matter appear in the list on **12th June, 2025.**

(Prasenjit Biswas, J.)