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25.7.2025
Ct. No. 16
SB

FA 138 of 2017
CAN 1 of 2017 (Old No. CAN 2999/2017) (Injunction)
CAN 2 of 2017 (Old No. CAN 8675/2017) (substitution)
CAN 3 of 2021 (substitution)

Sri Banaful Sett
Vs.
Sri Tapan Kumar Key & Anr.

Mr. Dibashis Basu
Mr. Arun Bandyopadhyay ... for the appellant

1. The note placed by the department is perused.
2. It appears that the department is facing difficulty in amending the cause title of the appeal as the application being CAN 3 of 2021 is still pending.
3. We appreciate the difficulty faced by the department in carrying out our previous order allowing such substitution.

CAN 3 of 2021

4. In spite of communication of order dated 22.5.2025 service upon the proposed substitution legal heirs of the defendants / respondents opposite party nos. 1 & 2, the said respondents are not represented. Previously, on that date we allow the application being CAN 6 of 2025 for substitution of Smt. Moumita Dutta, died during the pendency of the appeal. However, it appears that there was a previous application being CAN 3 of 2021 in which prayer was made for substitution of the legal heirs of Smt. Banalata Dey who died intestate on 09.3.2021 leaving behind one son and one married daughter as her legal heirs and representatives particulars whereof have been set out in paragraph 8 of the said application. The said application was



filed within the period of limitation. Both the legal heirs are all major, *sui juris* and the right to *sue survives* and there is not legal impediment for bring them on record. However, Smt. Moumita Dutta had died in the meantime. In view thereof there has to be a formal order recording the death of Moumita Dutta.

5. In order to keep the record pure, it is necessary that CAN 3 of 2021 is allowed and then the recording of death of Moumita Dutta shall be made in terms of the order passed in CAN 6 of 2025.
6. Accordingly, we allow the application for substitution of legal heirs and representatives of Smt. Banalata Dey and after this amendment being carried out the order passed dated 22.5.2025 in CAN 6 of 2025 should be carried out by the department concerned. The entire exercise shall be completed within two weeks from date.
7. The application being CAN 3 of 2021 is disposed of.

CAN 2 of 2017 (Old No. CAN 8675/2017)

8. This is an application for substitution of the legal heirs of defendant / respondent no. 1 Sri Tapan Kumar Dey. The said defendant died during the pendency of the suit on 04.6.2017 and the application has been filed within the period of limitation. The defendant / respondent no. 1 was survived by legal heirs and representatives mentioned in Paragraph 10 of the said application. The legal heirs and representatives are the wife, sons and daughters of the deceased Sri Tapan Kumar Dey and they are all adult, *sui juris* fit and competent persons and to be



substituted in place and stead of the deceased defendant / respondent no. 1 Sri Tapan Kumar Dey.

9. Accordingly, we allow this application for substitution being CAN 2 of 2017 (Old No. CAN 8675/2017).
10. The department is directed to carry out the necessary amendments to cause papers and memorandum of appeal and the application for stay within one week from date.

CAN 1 of 2017(Old No. CAN 2999/2017)

11. Upon the amendments being carried out in the memorandum of appeal and the cause papers including the application pending, a copy of the amended memorandum of appeal and application being CAN 1 of 2017 (Old No. CAN 2999/2017) shall be served upon the surviving as well as substituted respondents immediately thereafter with a copy of this order in respect of CAN 2 of 2017 and CAN 3 of 2021 with an intimation that the matter shall be listed after four weeks.
12. In the event the respondents are not represented, the aforesaid appeal and the applications may be heard in absence of the said respondent. An affidavit of service to that effect shall be filed on the next date of hearing.

(Soumen Sen, J.)

(Apurba Sinha Ray, J)